United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

ORIGINAL

13
P-15

75-1073

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

ISRAEL DIAZ-MARTINEZ,

Defendant-Appellant.

On Appeal From the United States District Court
For The Eastern District Of New York

Appellant's Appendix

Vol. I — Pages A-1—A-19 and 1-310

ZUCKERBERG, SANTANGELO & MAHLER, P.C.
Attorneys for Defendant-Appellant
118-21 Queens Boulevard
Forest Hills, N.Y. 11375
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UNITED STATES COURT OF APPEALS
FILED
APR 14 1975
DANIEL FUSARO, CLERK
SECOND CIRCUIT

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74CR269

D. C. Form No. 100
CRIMINAL DOCKET

74CR 403 MISHLER,

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	FIFFE-Legal Aid-15 Park
X EDUARDO BERMUDEZ	for deft BERMUDEZ:
X JORGE VIVAS aka Jorge Posos	Charles Sutton
X ISRAEL DIAZ-MARTINEZ	299 Broadway, NYC.
MANUEL FIFFE aka "Pfiefel"	964-8612
VICTOR BLANCI aka "Red"	For Defendant: MIRANDA
LUIS FELIPE MIRANDA	Frank Lopez-31 Smith St.
	B'klyn, N.Y.- 237-9500

Did conspire to distribute cocaine, etc.

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED				
			DATE	NAME	RECEIVED		DISBURS
Fine,			2/7/75	Notice of appeal(No Fee)			
Clerk,				VIVAS and BERMUDEZ)			
Marshal,			2-20-75	Notice of Appeal - Diaz Martinez	5	—	
Attorney,			2-21-75	Paid to Tolins.			5
Commissioner's Court,							
Witnesses,							

DATE	PROCEEDINGS
1-30-74	Before WEINSTEIN J - Indictment filed ordered sealed by the Court - Bench Warrants Ordered and Issued for all defts.
6-21-74	Before MISHLER, CH J - case called - defts BERMUDEZ & VIVAS present without counsel - Sealed Indictment ordered opened - Interpreter E.Rodriguez present - the court advised defts of their rights - arraignment continued to June 24 1974 @ 9:30 am . Bail set at $250,000 as to defts BERMUDEZ & VIVAS.
6-24-74	Notice of Appearance filed (VIVAS)
6-24-74	Before MISHLER, CH J - case called - defts BERMUDEZ, VIVAS & BLANCI present - Interpreter E.Rodriguez present for the defts - counsel for deft VIVAS present - deft VIVAS arraigned and enters a plea of not guilty - bail set at $50,000 P/R Bond with wife to sign as surety and also the deed to his house - court to assign counsel

74CR 403

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
	for defts. BERMUDEZ & BLANCO - pleading adjd wothout date as to defts BERMUDEZ & BLANCO.		
6-25-74	By MISHLER, CH.J.- Order appointing counsel filed (BERMUDEZ)		
6-25-74	By MISHLER CH.J.- Order appointing counsel filed (BLANCO)		
7-2-74	Bench warrant retd and filed- executed (ISRAEL DIAZ-MARTINEZ)		
7-2-74	Before MISHLER, CH.J.- Case called- Deft Diaz-Martinez and counsel preser Deft arraigned and enters a plea of not guilty-Bail set at $50.000 surety co. bond or a P/R Bond secured by $2.500 in cash and any interest in his home. Wife of deft to sign as surety- Deft has until 7-3-74 at 4:00 P.M. to comply to the bail condition		
7-2-74	Notice of appearance filed (DIAZ-MARTINEZ)		
7-2-74	Petitions for writs of habeas corpus ad proseuquendum filed (MIRANDA and		
7-2-74	By MISHLER, CH.J.- Writs issued, ret. 7-8-74 (MIRANDA and FIFFE)		
7-3-74	By SCHIFFMAN,MAG.- Order for acceptance of cash bail filed (DIAZ MARTINEZ		
7-5-74	Magistrates Proceeding and Certified copy of Warrant of removal received from Eastern District of Louisiana and filed (EDUARDO BERMUDEZ)		
7-8-74	Before MISHLER, CH.J.- Case called- Deft FIFFE and deft MIRANDA presen with counsel- Court appointed Legal Aid as counsel for the deft FIFFE- Interpreter Emil Rodriquez present for deft FIFFE- Both defts arraigned an each enters a plea of not guilty- Bail set at $50,000.00 surety co. bond to both deft- Trial set for 9-30-74		
7-8-74	Notice of appearance filed (MIRANDA)		
7-9-74	Writ retd and filed executed (FIFFE)		
7-9-74	Writ retd and filed-executed (MIRANDA)		
7-10-74	By MISHLER, CH.J.- Order appointing counsel filed (FIFFE)		
7-9-74	Certificate of Engagement filed -above case set down for trial for Sept. 30, 1974 at 10:00 am in courtroom #5. signed by Chief Judge Jacob Mishler dated July 9, 1974. (attys notified)		
7-11-74	Before MISHLER, CH J - case called - motion for reduction of bail as to deft BERMUDEZ - bail reset at $100,000 surety Company bond.		
7-11-74	Writs retd and filed - Executed (Miranda) (Fiffe)		
7-31-74	Before MISHLER, CH J - case called - motion for reduction of bail as to deft BERMUDEZ - motion argued - decision reserved.		
8-1-74	Before MISHLER, CH J - case called - motion for reduction of bail as to deft Miranda - Bail is modified to $50,000 personal bond to be secured by a cash deposit of $5,000.00.		
8-6-74	Magistrates File 74M974 inserted into CR file		
8-16-74	Notice of Motion filed, ret. 8-23-74, for Inspection, Bill of Particulars (deft Ismhel Diaz-Martinez)		

GSA DC 72-14455

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CRIMINAL DOCKET

DATE	PROCEEDINGS
8-16-74	Before Mishler, Ch J - case called - motion for reduction of bail argued (Victor Blanco) On application by the Govt the bail is reduced to $10,000 P/R Bond signed by defts sister.
8-23-74	Before MISHLER,CH.J.- Case called- Motion for an order pursuant to Rule 16 argued- motion granted and denied as indicated on record (DIAZ-MARTINEZ)
9-9-74	Notice of motion for severance, etc. filed rete. 9-13-74(DIAZ-MARTIN
9-13-74	Before MISHLER,CH.J.- Case called- Motion for severance argued- motic denied(ISRAEL DIAZ-MARTINEZ)
9-20-74	By MISHLER, CH.J.- Order appointing counsel filed(FIFFE)
9-20-74	Petition for writ of habeas corpus ad pro equendum filed- (FIFFE)
9-20-74	By WEINSTEIN,J.- Writ issuedd ret. 9-24-74(FIFFE)
9-24-74	Writ retd and filed- executed (FIFFE)
9-24-74	Petitions for writs of habeas corpus ad proseuquendum filed (BLANCO, MIRANDA and FIFFE)
9-24-74	By MISHLER, CH.J.- Writs issued, ret. 9-25-74 (above 3 defts)
9-26-74	Petition for writ of habeas corpus ad Prosequendum as to defts BLANCO, MIRANDA FIFFE Filed.
9-26-74	By JUDD,J.-Writs issued ret. 9-28-74 as to defts BLANCO, MIRANDA and FIFFE.
9/26/74	Petition for Writ of Habeas Corpus Ad Prosecundum filed (V. BLANCO
9/26/74	By JUDD,J.- Writ issued, ret. 9-27-74
9-30-74	Before Judd, J - case called - defts & counsels present - adjd to Oct. 4, 1974 for motions and Oct. 15, 1974 for trial.
10/1/74	Writs retd and filed executed (BLANCO(2), FIFFE(2), and MIRANDA)
10-2-74	Notice of Appearance filed as to deft BERMUDEZ.
10-3-74	Notice of Motion filed for review of bail, etc. (ret. 10-4-74) deft Bermudez.
10-3-74	Petition for Writ of Habeas Corpus Ad Prosequendum filed(FIFFE)
10-3-74	By MISHLER, CH J - Writ Issued, ret. Oct. 7, 1974 (FIFFE)
10/4/74	Before MISHLER, CH.J.- Case called- Motion by deft Diaz-Martinez for a severance argued- motion denied - deft BERMUDEZ+and counsel present interpreter present- motion for reduction of bail argued- bail reduce to $50,000.00 cash, deposit of $5,000.00- with the wife and mother in signing as surety-Also wife and mother in law to surrender passports
10-8-74	Writ retd and filed - executed (Fiffe)

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DATE	PROCEEDINGS
10-9-74	~~thxxxxxxxxxx~~ Petition for Writ of Habeas Corpus Ad Prosequendum filed (defts Fiffe, Victor Blanco & Luis Felipe Miranda)
10-9-74	By COSTANTINO J - Writs issued, ret. Oct. 10, 1974 as to Luis Felipe Miranda and ret. Oct. 9, 1974 as to Fiffe & Blanco.
10-9-74	Notice of Motion filed (deft Israel Diaz-Martinez) for suppressing evidence etc. (forwarded to Chambers) ret. date Oct. 15, 1974.
10/8/74	By CATOGGIO,MAG.- Order for acceptance of cash bail filed(EDUARDO BERMUDEZ
10/11/74	Petitions for writs of habeas corpus ad prosequendum filed(FIFFE, MIRANI
10/11/74	By MISHLER, CH.J.- Writs issued, ret. forthwith
10-15-74	Before MISHLER, CH J - case called - motion for vacating search warrant, etc. Motion argued and motion denied.(Israel Diaz-Martinez)
10-15-75	Writs retd and filed - Executed as to defts FELIPE MIRANDA, BLANCO & FIFFE.
10/15/74	Before MISHLER, CH.J.- Case called- Deft BERMUDEZ, VIVAS, MARTINEZ, FIFFI BLANCO and MIRANDA present with counsel- Defts FIFFE, BLANCO and MIRANDA withdraw their pleas of not guilty and after being advised of their rights by the court and on their own behalf each enter a plea of guilty to count 1- Motion by govt to sever as to defts FIFFE, BLANCO MIRANDA is granted- Trial ordered and begun- Jurors selected and sworn- Interpreters present- Trial cont to 10/16/74 at 10:00 A.M.
10-16-74	Before MISHLER, CH J - case called - defts BERMUDEZ, VIVAS, DIAZ & ~~marxix~~ MARTINEZ present with counsels - Interpreters J. Guma and Emil Rodriguez present - trial resumed - motion by deft DIAZ-MARTINEZ for a severance is denied - motion by defst VIVAS & DIAZ-MARTINEZ is denied - trial contd to Oct. 17, 1974.
10/17/74	Before MISHLER, CH.J.- Case called- Deft BERMUDEZ, VIVAS and DIAZ-MARTINI Interpreters present- Trial resumed- Motion by deft DIAZ-MARTINEZ for a mis is denied- Hearing held on motion to suppress- Hearing contd to 10/18/74 at 9:30 A.M.- Trial contd to 10/18/74 at 10:00 A.M.
10-18-74	Govts Memorandum of Law, defts Memorandum of Law in support of motion for an order vacating the search warrant issued for 293 Grand Street and suppressing all evidence etc. filed received from Chambers and returned.
10/18/74	Before MISHLER, CH.J.- Case called- Deft DIAZ-MARTINEZ and counsel presen Hearing resumed- Motion to suppress is granted- Hearing concluded- Defts BERMUDEZ, VIVAS and DIAZ-MARTINEZ present with counsel- Interpreters presen Trial resumed- Motion by defts BERMUDEZ and DIAZ-MARTINEZ for a mistrial denied- Trial contd to 10/21/74 at 10:00 A.M.

CR 403

CRIMINAL DOCKET

DATE	PROCEEDINGS
10/21/74	Before MISHLER, CH.J.- Case called- Defts BERMUDEZ, VIVAS and DIAZ MARTINEZ present with counsel- Interpreters present- Trial resumed Motionby deft DIAZ-MARTINEZ for severance is denied- Motions by defts VIVAS and DIAZ-MARTINEZ for a mistrial is denied- Trial contd to 10/22 at 10:00 A.M.
10-22-74	Before MISHLER, CH J - case called - defts BERMUDEZ, VIVAS & DIAZ-MARTINEZ present with counsels - Interpreters J.Guma and Emil Rodriguez present - trial resumed - Govt rests - motion by defts BERMUDEZ & VIVAS to dismiss counts 1 and 6 is denied - Motion by deft DIAZ-MARTINEZ for severance, mistrial and dismissal is denied - Trial continued to Oct. 23, 1974.
10-23-74	Before MISHLER, CH J - case called - defts present with counsels trial resumed - Interpreters Guma & Rodriguez present - defts Bermudez & Vivas rest.Motion by deft Diaz-Martinez for mistrial is denied. Deft Diaz=Martin rests - trial contd to Oct.24,1974.
10/24/74	Before MISHLER, CH.J.- Case called- defts BERMUDEZ, VIVAS, and DIAZ-MARTINEZ, present with counsel- Interpreters present- Trial resum Govt and defts reset- Motion by the defts to dismiss the indictment- motion denied- Trial contd to 10/25/74 at 10:00 A.M.
10/24/74	By MISHLER,CH.J.-Orderof sustenance filed
10/25/74	Before MISHLER, CH.J.- Case called- Defts BERMUDEZ, VIVAS and DIAZ-M NEZ present with counsel- Interpreters present- Trial resumed- Jury retires todeliberate-At 7:30 P.M. jury advised the court that they w like to return tomorrow for further deliberation- Court excused Jury for day and are to resume deliberations on 10/26/74 at 11:30 A.M.
10/25/74	By MISHLER, CH.J. - Order of sustenance filed
10/26/74	Before MISHLER, CH.J.- Case called- Defts BERMUDEZ, VIVAS and DIAZ-MARTINEZ present with counsel- Interpreter J. Guma present- Trial re At 12:15 jury resumed their deliberations - Order of sustenance sign for lunch- At 4:05 jury returned and rendered a verdict of guilty on count 1 as to deft BERMUDEZ, VIVAS and DIAZ-MARTINEZ, and not gui on count 6 as to defts BERMUDEZ and VIVAS- Jury polled- Jury dischar Trial concluded- Memo of verdict signed by the foreman andordered fi Bail conditions contd- All motions reserved until sentence- sentence adjd without date
10/26/74	By MISHLER, CH.J.- Order of sustenance filed
10/26/74	Memorandum of verdict filed

D. C. 109

DATE	PROCEEDINGS
)-25-74	Voucher for Expert Services filed (Vivas)
11-14-74	Magistrate's file 74 M 1456 inserted into CR jfile.
11-21-74	3 stenographic transcripts filed (pgs 1541 to 1814a)
1-26-74	Voucher for Expert Services forwarded to Ch.Judge Irving Kaufman for approval(deft Bermudez) with cover letter from Chief Judge.
2/13/74	Above voucher for expert services retd and filed
12/18/74	Stenographers Transcript dated October 15, 1974, 10/16/74, 10/17/74, 10/18 10/21/74, 10/22/74 and 10/23/74 filed (2)
1-14-75	Petition for Writ of Habeas Corpus Ad Prosequendum filed (Fiffe)
1-15-75	By MISHLER, CH J - Writ Issued, ret. Jan. 17, 1975 (Fiffe)
1-15-75	Petition for Writ of Habeas Corpus Ad Prosequendum filed (MIRANDA & BLANCO)
1-15-75	By MISHLER, CH J - Writs issued, ret. Jan. 17, 1975 (MIRANDA & BLANCO)
1/17/75	Before MISHLER, CH.J.- Case called- Sentence of deft BAEZA adjd to 3/14/75 on consent-Sentence adjd to 2/7/75 on consent as to deft MIRANDA- Deft FIFFE and counsel present- Sentence adjd to 3/28/75 on motion of deft and consent of Govt- Deft BLANCO and counsel present- Sentence adjd to 3/28/75 on motion by deft and consent of Govt-
1/17/75	Two writs retd and filed- executed (FIFFE and MIRANDA)
1-20-75	Voucher for compensation of counsel filed (Bermudez) Sara Halbert,Esq.
2/7/75	Before MISHLER, CH.J.- Case called- Deftr and counsel present- deft VIVAS Interpreter present sentenced to imprisonment for a period of 5 years and a special parole term of 10 years on count 1- Special condition of parole is that if the deft is deported he is not to re-enter the U.S. or its territories or possessions during his parole term- Bail conditions contd- deft advised of his right to appeal- Clerk to file notice of appeal- Deft BERMUDEZ sentenced to imprisonment on count 1 for a period of 5 years and a special parole term of 10 years- special condition of parole is that if the deft is deported he is not to re-enter the U.S. or its territories or possessions during his parole term- Bail conditions contd- Deft advised of right to appeal- Clerk to file notice of appeal without fee- Deft DIAZ-MARTINEZ sentenced to imprisonment for a period of 5 years on count 1 and a special parole term of 10 years- Court advised deft of his right to appeal- Bail conditions contd
2/7/75	Judgments and Commitments filed- certified copies to Marshal (VIVAS, DIAZ-MARTINEZ and BERMUDEZ)
2/7/75	Notice of appeal without fee filed(BERMUDEZ, VIVAS)
2/7/75	Docket entries and duplicate of notice of appeal mailed to court of appeals

74 CR--403

CRIMINAL DOCKET

DATE	PROCEEDINGS
2-20-75	Notice of Appeal filed (Diaz-Martinez)
2-20-75	Docket entries and duplicate of Notice of Appeal mailed to the Court of Appeals together with Form A(Diaz-Martinez)
2-24-75	Order received from the Court of Appeals filed that record be docketed on or before March 7, 1975 (Bermudez & Vivas)
2-26-75	Order received from the Court of Appeals that Index to Record be docketed on or before March 7, 1975 (Diaz-Martinez)
3/5/75	Stenographer s Transcript dated 8/23/74 filed
3/6/75	Voucher for expert services filed(court reporter)
3/6/75	Record on appeal certified and handed to Richard Bailey for delivery c of a

TRUE COPY ATTEST
DATED 3/6 19
LEWIS ORFIELD
BY DEPUTY

JUDGMENT AND COMMITMENT (Rev. 2-68) Cr. Form No. 25

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
FEB 7 1975
TIME A.M.
P.M.
M'FILMED

United States of America

v.

ISRAEL DIAZ-MARTINEZ

No. 74 CR 403

On this 7th day of February, 19 75 came the attorney for the government and the defendant appeared in person and[1] with counsel

IT IS ADJUDGED that the defendant upon his ~~plea~~ a verdict of guilty

has been convicted of the offense of violating T-21, U.S.C.Secs. 846 and 841(a)(1) in that on or about and between Oct. 31, 1973 and May 1, 1974, both dates being approximate and inclusive, the defendant, with others, did knowingly and intentionally conspire to possess with intent to distribute cpcaine hydrochloride, a Schedule II narcotic drug controlled substance

as charged[2] in count 1

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] 5 years on count 1

and special parole term of 10 years.

~~[5]~~

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

The Court recommends commitment to[6]

Jack B. Weinstein,
United States District Judge.

,
Clerk.

A-8 ... advised the defendant of his rights

... any other outstanding unserved sentence; (3) ... the fine or fine and costs, or until he is otherwise discharged as provided by law. [5]Enter any order with respect to suspension and probation. [6]For use of Court to recommend a particular institution.

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
MAY 30 1974
TIME A.M.
P.M.

TP:DAD:sd
F #741783

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against -

EDUARDO BERMUDEZ,
JORGE VIVAS also known as
Jorge Posos,
ISRAEL DIAZ-MARTINEZ,
MANUEL FIFFE also known as
"Pfiefel",
VICTOR BLANCO also known as
"Red", and
LUIS FELIPE MIRANDA,

Defendants.

- - - - - - - - - - - - - - - - - - X

Cr. No. _____
(T. 21 U.S.C., §846 and
§841(a)(1)
T. 18 U.S.C., §2))

THE GRAND JURY CHARGES:

COUNT ONE

On or about between the 31st day of October, 1973, and the 1st day of May, 1974, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants EDUARDO BERMUDEZ, JORGE VIVAS also known as Jorge Posos, ISRAEL DIAZ-MARTINEZ, MANUEL FIFFE also known as "Pfiefel", VICTOR BLANCO also known as "Red", and LUIS FELIPE MIRANDA, together with Juanita Diaz also known as "Jenny", herein named as a co-conspirator but not as a defendant, and others, did knowingly and intentionally conspire to violate Section 841(a)(1) of Title 21, United States Code.

1. It was a part of said conspiracy that the defendants and co-conspirators would knowingly and intentionally distribute and possess with intent to distribute cocaine hydrochloride, a Schedule II narcotic drug controlled substance.

2. It was further a part of said conspiracy that the defendants and co-conspirators would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities. (Title 21, United States Code Section 846).

COUNT TWO

On or about the 5th day of November, 1973, within the Eastern District of New York, the defendants VICTOR BLANCO, also known as "Red" and MANUEL FIFFE, also known as "Pfiefel" did knowingly and intentionally possess with intent to distribute approximately one ounce of cocaine hydrocloride, a Schedule II narcotic drug controlled substance. (Title 21 United States Code, Section 841(a)(1) and Title 18 United States Code Section 2).

COUNT THREE

On or about the 5th day of November, 1973, within the Eastern District of New York, the defendants VICTOR BLANCO, also known as "Red" and MANUEL FIFFE, also known as "Pfiefel" did knowingly and intentionally distribute approximately one ounce of cocaine hydrocloride, a Schedule II narcotice drug controlled substance. (Title 21 United States Code, Section 841(a)(1) and Title 18 United States Code Section 2).

COUNT FOUR

On or about the 12th day of November, 1973, within the Eastern District of New York, the defendants VICTOR BLANCO, also known as "Red", MANUEL FIFFE, also known as "Pfiefel" and LUIS FELIPE MIRANDA did knowingly and intentionally possess with intent to distribute approximately 1/8 kilogram of cocaine hydrocloride, a Schedule II narcotic drug controlled substance. (Title 21 United States Code, Section 841(a)(1) and Title 18 United States Code Section 2).

COUNT FIVE

On or about the 12th day of November, 1973, within the Eastern District of New York, the defendants VICTOR BLANCO, also known as "Red", MANUEL FIFFE, also known as "Pfiefel" and LUIS FELIPE MIRANDA did knowingly and intentionally distribute approximately 1/8 kilogram of cocaine hydrocloride, a Schedule II narcotic drug controlled substance. (Title 21 United States Code, Section 841(a)(1) and Title 18 United States Code Section 2).

COUNT SIX

On or about the 20th day of November, 1973, within the Eastern District of New York, the defendants EDUARDO BERMUDEZ, JORGE VIVAS, also known as Jorge Posos, MANUEL FIFFE, also known as "Pfiefel" and VICTOR BLANCO, also known as "Red" did knowingly and intentionally possess with intent to distribute approximately 1/2 kilogram of cocaine hydrocloride, a Schedule II narcotic drug controlled substance. (Title 21 United States Code, Section 841(a)(1) and Title 18 United States Code Section 2).

A TRUE BILL

James R. McElroy
FOREMAN

David T. Zugen by DAK
UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA

-against-

ISRAEL DIAZ-MARTINEZ,

Defendant.

----------X

74 Cr 403

NOTICE OF APPEAL

FILED
U.S. DISTRICT COURT E.D. N.Y.
FEB 26 1975
TIME A.M.
P.M.

Name and Address of Appellant: Israel Diaz-Martinez
54 Jefferson Street
Brooklyn, New York 11206

Name and Address of Appellant's Attorneys: Zuckerberg, Santangelo & Mahler, P.C.
118-21 Queens Boulevard
Forest Hills, New York 11375

Offense: §841(a)(1) of Title 21, United States Code

Appellant appeals from the judgment of conviction rendered against him on the 7th day of February, 1975, wherein he was sentenced to imprisonment for a term of five (5) years.

Appellant is presently at liberty under bail.

The above named appellant hereby appeals to the United States Court of Appeals for the Second Circuit from the above stated judgment, and from each and every part and the whole thereof.

Dated: February 13, 1975

Yours, etc.

ZUCKERBERG, SANTANGELO & MAHLER P.
Attorneys for Defendant
Office & P.O. Address
118-21 Queens Boulevard
Forest Hills, New York 11375
(212) 268-5575

TO:

HON. DAVID G. TRAGER
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★
★ SEP 09 1974
TIME A.M.
P.M.

UNITED STATES OF AMERICA

-against-

ISRAEL DIAZ-MARTINEZ,

Defendant.

NOTICE OF MOTION

74 Cr. 403

S I R :

PLEASE TAKE NOTICE that, upon the annexed affidavit of STEPHEN R. MAHLER, attorney for the defendant, ISRAEL DIAZ-MARTINEZ, and upon the indictment and all of the proceedings heretofore had herein, the defendant ISRAEL DIAZ-MARTINEZ will move this Court, at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, in a part thereof to be presided over by HON. JACOB MISHLER, on the 13th day of September, 1974, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order, pursuant to Rule 8 or Rule 14, Federal Rules of Criminal Procedure, granting to the defendant ISRAEL DIAZ-MARTINEZ, a separate trial from that of his co-defendants or a severance of the conspiracy count of this indictment in which he is charged, from the substantive counts in which his co-defendants are charged, on the grounds that he is the victim of misjoinder and is severely prejudiced by such joinder, and for such other and further

relief as to this Court may seem just and proper.

Dated: Forest Hills, New York
September 4, 1974

Yours, etc.

STEPHEN R. MAHLER
Attorney for Defendant
ISRAEL DIAZ-MARTINEZ
Office & P.O. Address
118-21 Queens Boulevard
Forest Hills, N. Y. 11375
(212) 544-3434

TO:

HON. DAVID TRAGER
United States Attorney for the
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA

-against-

ISRAEL DIAZ-MARTINEZ,

Defendant.

AFFIDAVIT

74 Cr. 403

----------x

STATE OF NEW YORK)
: SS:
COUNTY OF QUEENS)

STEPHEN R. MAHLER, being duly sworn, deposes and says:

That I am the attorney for defendant ISRAEL DIAZ-MARTINEZ, one of the six (6) defendants named in this instant indictment.

That I make this affidavit in support of the present motion made by the aforesaid defendant, seeking a severance of the first count of this indictment charging him with having conspired with five (5) co-defendants to both distribute and process, with intent to distribute, cocaine hydrocloride, from five (5) other substantive counts therein variously charging only the co-defendants, but not ISRAEL DIAZ-MARTINEZ, with knowing and intentional possession with intent to distribute and actual distribution of cocaine hydrocloride.

Nowhere is an allegation made by the government in the indictment that the conspiracy count and the substantive counts arose out of a series of transactions in which both the Movant and his co-defendants participated or that all of the substantive counts evolved from the conspiracy as part of a common scheme or plan.

Accordingly, it would seem that defendant DIAZ-MARTINEZ is a victim of misjoinder as defined by Rule 8 of the FRCP, which would mandate, at most, that he be afforded a separate trial and at least that the conspiracy count in which he is charged be severed from the substantive counts in which he is not charged.

Furthermore, based on the papers, records and pleadings on file in this action (we have not as yet been served with and had the advantage of the court-ordered Bill of Particulars), it would seem, upon information and belief, that there is no allegation of a connection or relationship between the conspiracy count and the substantive counts as far as DIAZ-MARTINEZ is concerned, or a common element of substantial importance in their commission. Therefore, the only effect that the cumulative, extraneous evidence adduced in regard to the substantive counts can have on the jury, with regard to the Movant, is to prove a dis-

position on his part to commit crimes generally rather than his guilt of the one of conspiracy.

Additionally, it would seem virtually impossible for the jury, if such a separate trial or severance of counts is not granted, to compartmentalize the evidence related solely to DIAZ-MARTINEZ in connection with the first count of the indictment so as to prevent him from being severely prejudiced by all of the other evidence received in regard to the remaining defendants and counts, especially in a narcotics case, what with the inflammatory nature of hard evidence intended to support substantive counts as opposed to the lesser quality of evidence generally tendered in support of conspiracy counts.

Pending receipt of a Bill of Particulars and Discovery and Inspection, other grounds which might be advanced in support of Movant's position herein, such as his possible intention to call one or more of his co-defendants as witnesses, or the statements or admissions made by co-defendants against the interest of Movant, etc., are not raised due to lack of sufficient knowledge concerning same.

No previous application has been made for the relief prayed for herein.

WHEREFORE, it is respectfully requested that an

Order be entered herein pursuant to Rule 8 of the FRCP mandating that the defendant ISRAEL DIAZ-MARTINEZ be granted a separate trial from his co-defendants or that the substantive counts of this indictment be severed from the conspiracy count due to misjoinder, or granting such relief in the exercise of its discretion pursuant to Rule 14 of the FRCP, and for such other and further relief as to this Court may seem just and proper.

STEPHEN R. MAHLER

Sworn to before me this
4th day of September, 1974.

EDITH MARTIN
Notary Public, State of New York
No. 41-2555800
Qualified in Bronx County
Commission Expires March 30, 1975

****

THE COURT: What is the basis upon which the motion is made?

MR. MAHLER: I made a motion under both Rule 8(b) and Rule 14.

THE COURT: You say because the conspiracy count --

MR. MAHLER: There's no indication in this case, in the information, that we've received, that the substantive counts flow from the conspiracy and I think--

THE COURT: Where does it say -- Do you have any citation of authority that that is a requirement?

MR. MAHLER: That's my reading. That's the way I read Rule 8(b); that there must be some connection of this type between the conspiracy count, especially in this case where the defendant Martinez is not charged in any of the substantive counts.

THE COURT: You mean Martinez isn't charged? You say --

MR. MAHLER: He's charged with the five other co-defendants in the conspiracy count.

THE COURT: I understand. He's not charged in any of the substantive counts?

MR. MAHLER: I think there has to be some type of showing that the substantive counts arose from the conspiracy in order to join him --

THE COURT: I never heard any claim. It has to be out of the same conspiracy. You might make an argument that it should somehow be related to the conspiracy. What do you say about that?

MR. De PETRIS: Your Honor, the Government's proof will connect the substantive counts to the conspiracy.

THE COURT: Same series of transactions?

MR. De PETRIS: Yes, sir.

THE COURT: What you're really saying is that this conspirator -- you have no proof this conspirator actually engaged in transactions that would be the basis of the substantive counts, but the substantive counts were during the term of the conspiracy and in the course of the conspiracy and to perform the conspiracy.

MR. De PETRIS: Yes, your Honor.

THE COURT: I don't know of any requirement that such an allegation must be made. Is that the basis of your motion?

MR. MAHLER: From the face of the indictment, there's no indication at all connecting my client with any of the other counts of the indictment. I'm saying that at the outset, just from my own investigation of the case and my conversations with my client. At this

point, I must go on that. I made this motion. I also made the motion on the general grounds under Rule 14, that the trial of the substantive counts in this case would be conspiracy counts, would be vastly prejudicial to the defendant Martinez since he isn't named in any of the substantive counts. Of course, I realize that this is quite discretionary with the Court.

THE COURT: On the representation of the Government that the proof will show that the transactions which were made the basis of the substantive counts, that part of the conspiracy -- and I assume the Pinkerton charge will in effect say that if the jury is satisfied that all the substantive counts were committed during the time of the conspiracy, while the defendant is not named, while members of the conspiracy, further in object of the conspiracy, then they may find the defendant's name in the substantive count, guilty because their acts of conspiracy.

MR. De PETRIS: Yes.

THE COURT: I don't see any reason for severing. The mere fact he isn't named in the substantive count certainly is no reason and I know of no case that requires the Government in addition, not essential elements of the crime charged to say in effect, "All the following subsequent counts were committed during

6 the conspiracy." The motion is denied.

Now, I don't mean during, but arose as a by-product.

THE COURT: To promote the conspiracy. If Mr. X -- instead of using Mr. X -- if Victor Bloco, Emanuel Fife, distributed one ounce of cocaine hydrochloride and that was the business of the conspiracy, it was part of that business. Then it was in the course of the conspiracy to promote it. If one of the defendants made a sale or buy or did something that violated narcotics law, that was not part of the conspiracy, then you have a good argument for a misjoinder.

MR. MAHLER: That's the motion that I'm making. Judge, I also would like to reserve the right to renew this if the evidence that we get on the bill of particulars will show that we have some type of antagonistic defense to the other defendants on the substantive counts and that we wish to call them as a witness in the case.

THE COURT: You better look up some law on that and see if you can call them.

MR. MAHLER: Can I ascertain whether or not the 30th is a firm date for the trial? I would like to make -- I realize it's hard to say, but if that's

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7 the case, there are other pre-trial motions to be made here. I would like to get a copy of the search warrant that was executed.

THE COURT: All I can tell you is I have a crowded calendar. I'm in the middle of a trial that was supposed to have ended on August 30th. The case is on trial tomorrow, Saturday. I hope to charge Monday. I have a case that I adjourned from the 16th to the 23rd and that was Mr. Fried who asked me to assure him it would go on the 30th. It's either a three or six day case. I say there's little likelihood, but keep in touch with me. It may very well be yours to go on. Assume it would go on. Make all motions to protect your clients' rights.

MR. MAHLER: We haven't gotten the bill of particulars.

THE COURT: Mr. De Petris has been busy, too.

MR. MAHLER: As long as I know that I'm not going to be put in a position where I'm moved to trial without such information.

THE COURT: It would have to be soon enough so that you can use it. There's a recent case, U.S. ex rel Lucas, Law Journal, supplies a statement in a note that was supposed to be Brady material and the petitioner said in the State Court trial he didn't have

time and it was during the trial. Judge Hay said the note -- they would have to make out a stronger case than that. Of course, Judge Oaks dissented.

It's far enough in advance so the defendant can use it. If the defendant can't use it, in my humble opinion, they've violated Brady.

* * *

THE CLERK: Criminal cause for trial, United States of America against Eduardo Bermudez, et al.

Criminal motion, United States against Israel Diaz-Martinez.

THE COURT: I will hear the motion first. It is really a re-argument, I heard it already.

Do you have the defendant's brief?

MR. KIMELMAN: I was handed it this morning.

THE COURT: Do you have a brief?

MR. KIMELMAN: No, sir.

THE COURT: Doyou want to say anything in opposition?

MR. KIMELMAN: Yes, your Honor.

The Court will recognize, under United States v. Harris, cited by the Supreme Court, that the affidavit in the Harris case is very similar to the affidavit in this case, and probably even less stronger than the affidavit in this case.

In the Harris case, the affiant said that the criminal involved had a reputation as being a narcotics trafficker.

In this case there was information from the files of the Drug Enforcement Administration that this defendant and that store was the subject of an intensive narcotics investigation.

In the Harris case, the informant said that he had purchased illegal whiskey for a period of time, and for more than two years, and within the last two weeks, and that he had knowledge of a person who had purchased whiskey within the past two days from Roosevelt Harris.

In this case, there is a similar situation, a confidential informant says that he had purchased cocaine from Mr. Diaz at 293 Grand Street and that he knew of someone else who had purchased cocaine within the past few days before the warrant was sworn to.

As for Mr. Mahler's contentions that the affidavit did not particularly describe the premises because there was apartments above the store, I think the affidavit is very clear as to what it is talking about when it says the 293 Clothing Corporation; the only description that is given is of a store, and of a basement of a store.

No mention was made of these apartments, and, in fact, no search was made of these apartments.

The independent checking of this informant by the affiant, special agent Campbell, was very clear. He checked to see if the phone numbers given to him by the informant were those of Mr. Diaz and of

phone numbers given to him by the informant were those of Mr. Diaz and of the store, and those phone numbers checked out.

He spoke to the Special Agent Abbott, who gave him a similar description of the premises, and who told him that Special Agent Abbott, himself, had been on those premises and had purchased cocaine on those premises.

All these things, your Honor, I think clearly fall within United States v. Harris and I think the affidavit is sufficient on its face.

THE COURT: I quite agree on the sufficiency of the affidavit.

The case you cite, Mr. Mahler, is misspelled. It is United States against Acarino, which happened to be my case.

The defect in Aguillar was the general description and conclusory statement in the affidavit that the informant was reliable.

In Aguillar, the affidavit said that the affiant had received reliable information from a credible person, and that the law enforcement authorities do believe that heroin, marijuana, barbiturates and other narcotics and narcotic paraphernalia are being kept at the above described

premises for the purpose of sale and use.

In Spinelli, it said that the FBI has been informed by a confidential and reliable informant that William Spinelli is operating a handbook.

Now, you recite the two-prong test from a State case, which is accurately stated;

First, whether the informant is, in fact, reliable.

My God --

MR. MAHLER: I say that --

THE COURT: It says that he describes the store in great detail --

MR. MAHLER: Not he, Judge.

THE COURT: He says --

MR. MAHLER: I beg to differ --

THE COURT: Let me finish. The informant gave the following description -- I read this, it says the previous sentence says, from his personal knowledge and from information given by the acquaintance, the informant gave the following description from his personal knowledge. He says be bought marijuana from the defendant -- was it cocaine?

MR. KIMELMAN: Cocaine.

THE COURT: Cocaine.

The previous reliable informant further said to the deponent that he has purchased quantities of cocaine from Diaz at 293 Grant Street, Brooklyn, New York, on a number of occasions, within the past three years.

If you went back to United States against Soicher, the en banc hearing and determination that is cited in Acarino, 394 F. 2d 443. It discussed Aguillar and says at page 453 that "where the affidavit of probable cause stated merely in conclusory terms, personal observation of the premises and information from sources believed by the police department to be reliable," that that was insufficient.

If the informant had used the phrase, "I have seen," Jones against the United States, and so forth, would be clear authority for the validity of the warrant.

MR. MAHLER: Always, your Honor, beginning at the beginning whereby we first established that he is reliable, then all these things can flow from that.

There is nothing in here, I am saying, to initially establish that he was reliable.

THE COURT: 1, reliability on five previous occasions, within the last, I think he said, 3 weeks or 5 days -- 7 times in the last 5 days. He has

given good information.

Then he says, "I personally purchased cocaine."

MR. MAHLER: Can we stop at the first one?

THE COURT: We can't do anything like it.

MR. MAHLER: Which has been corroborated? How?

THE COURT: The motion is denied. The only question I have is the challenge to the search warrant, because it gives the entire premises, 293 Grant Street.

MR. KIMELMAN: Your Honor, if I may say, the search warrant is specifically for this corporation, 293 Clothing Corporation at those premises. The only information given in the warrant which describes the premises, that is the title of the warrant, is of the clothing store and the basement of the clothing store.

MR. MAHLER: It is not even the 293 Clothing Corporation, it is the 239 Clothing Corporation. That may just seem miniscule, but in this particular case, it is not.

THE COURT: Were the proper premises 293?

MR. MAHLER: The address is 293.

THE COURT: That's the important thing, whether the proper premises were searched.

MR. KIMELMAN: In fact, your Honor, only the

store and the basement were searched.

THE COURT: Where is the warrant? I have it here.

MR. MAHLER: The basement is what was searche am I right?

MR. KIMELMAN: The store and the basement.

MR. MAHLER: The stuff was recovered from the basement, is that right?

MR. KIMELMAN: That is correct.

MR. SUTTON: May I speak to the point, your Honor?

THE COURT: How do you come in?

MR. SUTTON: I come in because there might be an overflow in connection where this --

THE COURT: You have no standing, I am sorry.

MR. MAHLER: This is a three-story building, as I point out, it is a store level, there are two apartments above the store, two stories, each occupied by separate tenants, and there is a basement.

The seizure was made in the basement.

THE COURT: This is the first time this argument has been made.

MR. KIMELMAN: That is correct, your Honor.

THE COURT: I would like you to submit some

authority on the degree of specificity required in the search warrant. I think it is enough.

I remember doing some work on giving the wrong address in the search warrant, and the officer searching the right building; it was just a typographical error. I can't even remember how the cases went, frankly, because I say I see this for the first time.

You don't intend to mention the seizure in your opening, do you?

MR. KIMELMAN: No, your Honor.

THE COURT: Then before it is all finished, that is the only argument I will listen to, that the search warrant did not, with specificity, describe the premises to be searched.

MR. MAHLER: Can I make a record concerning the affidavit?

THE COURT: I thought you made the record. It is insufficient.

MR. MAHLER: I would like to be heard on the affidavit. I don't want to waste time.

THE COURT: You are, because you have said it all in the affidavit; you have said it in the brief.

If I said, and I said so specifically, motion denied on the ground that the affidavit is sufficient,

you can go up on that.

The Court of Appeals wants to look at the affidavit, they don't care what you say about it any more than I care what you say about it.

It is a question of law, it is either sufficient or it isn't. Arguments you can make up there. You've already made your argument.

But as I say, if you would like to exercise your voice, go ahead. It won't mean anything. I have said it on the record.

MR. MAHLER: Only to say, in every case that I have read, there has never been a case that I have seen where there is no showing of reliability for the informant. Merely to say that he has provided the information --

THE COURT: What do you think of the statement, this informant in the last 5 days has given us information as to 7 incidents of narcotics violation, and we found them to be reliable?

MR. MAHLER: That is something more, even than you have here, as skimpy --

THE COURT: I am paraphrasing what is there.

MR. MAHLER: He doesn't say that.

MR. KIMELMAN: If I may, he said that the previously reliable informant who has provided

information which has been corroborated on at least 7 prior occasions during the past 5 weeks --

THE COURT: All right.

MR. KIMELMAN: United States versus Harris, that is all that is required.

THE COURT: Has provided information that has been corroborated.

I can't recall the case that came before me, but, mind you, there was no reliable information that the informant had given before, but the informant said that at a certain time, a certain car, color, make and license number, would arrive at a certain place -- I think it was a distilling case -- with sugar to make the alcohol.

Never before did he give any information, and sure enough, the surveilling agents saw the very thing happen. And that was corroboration and reliability.

MR. MAHLER: I whole-heartedly agree with that. There is nothing near that in this affidavit.

THE COURT: How about him saying he bought cocaine from this defendant at 293 Grant Street, how about that?

MR. MAHLER: That is something he is saying. Before that he has to be shown to be reliable.

THE COURT: You want to know something, in my humble opinion, if there was nothing else in the affidavit that would probably be enough.

MR. MAHLER: If the officer says on one occasion I observed him going into the premises or corroborated in some way --

THE COURT: What you are challenging is the truth of the evidence. The sufficiency of the affidavit depends on whether the magistrate had a right to rely on the information given to him, even if it were false -- and if it turned out to be false, unless the affidavit by the agent is intended to commit a fraud on the Court, he knows it is false.

Now we have a different situation. That is what you are really arguing, that you don't believe the affidavit.

MR. MAHLER: All my argument is --

THE COURT: You have made your argument. You have made your point. It was expansive, it's on the record.

As I say, the only question I can see at all here is the degree of specificity in the warrant in directing the search of 293.

MR. KIMELMAN: I will be very happy to provide the Court with cases.

If I may just say, the warrant --

THE COURT: You will find very few.

MR. KIMELMAN: The warrant also says premises known as 293 Clothing Corporation, 293 Grant Street.

THE COURT: That doesn't describe the place in the premises. That recites the name of the corporation.

MR. KIMELMAN: The premises --

THE COURT: Suppose they call it the XYZ Corporation, would you be in any better position?

MR. KIMELMAN: The premises known as 293 Clothing Corporation are more than sufficiently described in the rider to the affidavit.

(continued next page.)

THE COURT: Is the affidavit part of the warrant?

MR. KIMELMAN: The affidavit is obviously part of the face of the warrant.

THE COURT: I don't know whether it can explain it. Don't say no so quickly, because I don't know.

If you can look to the affidavit to determine the place to be served, I have no problem, then there is no argument, but if the warrant is an instrument in and of itself, and if you can't look beyond it and you must rely on the warrant itself, then it is something that has to be cleared up.

MR. KIMELMAN: Before it is offered into evidence, I will provide the Court with a memorandum.

THE COURT: Yes. Just alert me to it. In the meantime, I will see if I can find what I have done on it in the past.

I may find the cases, I don't know. You can also submit.

MR. MAHLER: Sorry that I got it into you so late. I have been on trial all week.

THE COURT: All right.

MR. KIMELMAN: Your Honor, there is another

search warrant, the evidence which was seized, part of the evidence which was seized by the Government, it intends to offer at this trial.

THE COURT: Whose premises were searched?

MR. KIMELMAN: Premises of the defendant Jorge Vivas.

THE COURT: Who represents Vivas?

MR. MATARAZZO: I do. I'm going to make the motion to suppress on the following grounds:

Number 1, it is totally different matter, has nothing to do with this case, and is highly prejudicial, once presented to a jury.

THE COURT: When did you first learn of the seizure?

MR. MATARAZZO: When? Two months ago.

THE COURT: Why didn't you make the motion before?

MR. MATARAZZO: Because I had no knowledge they were going to present it in this case. It is a totally different case, totally different arrest before this sealed indictment. It has nothing to do with this case, absolutely nothing to do with this conspiracy case.

THE COURT: What was seized?

MR. KIMELMAN: Your Honor, Mr. Vivas is

charged as a result of that seizure, with possession of marijuana. The Government does not intend to introduce the marijuana seized on that occasion against Mr. Vivas, but there was also a scale with traces of cocaine and other paraphernalia that could be used in the cocaine business, which is the object of this conspiracy which the Government does intend to use against Mr. Vivas.

THE COURT: What do you say is wrong with the seizure?

MR. MATARAZZO: There is nothing wrong with the seizure. I say it is a different case.

THE COURT: You are talking about relevancy?

MR. MATARAZZO: Not only is it not relevant, it is so highly prejudicial, that I will inform the Court now that I will move for a mistrial. It has nothing to do with this case. All the Government is attempting to do is to window-dress their conspiracy case with a seizure of marijuana and other articles.

MR. SUTTON: It would be the kind of circumstantial evidence --

THE COURT :We are not talking about an unlawful seizure, we are talking about relevancy, aren't we?

MR. KIMELMAN: I believe Mr. Matarazzo is talking about prejudice.

MR. MATARAZZO; Together with relevancy.

THE COURT: It is only irrelevant evidence that is prejudicial that we have to be concerned about.

MR. KIMELMAN: The Government would offer this evidence as similar acts and to show the motive of the individuals involved, that they were participating in a cocaine conspiracy.

THE COURT: When was the seizure made?

MR. KIMELMAN: June 14, your Honor.

MR. MAHLER: Then I would have to join in, too. I have never been given any notice that there was another warrant in the case.

MR. KIMELMAN: That is not true. Last time all the lawyers were before the Court I informed all the lawyers of the other warrant.

THE COURT: June 14th, when?

MR. KIMELMAN: 1974.

THE COURT: So it was after the indictment.

Even if it is admissible, I would have to say that it is chargeable against only the defendant Vivas.

MR. KIMELMAN: That is correct, your Honor.

THE COURT: At this point I don't know whether it is admissible. I have to hear the case unfold.

Have you read United States Against Deaton?

MR. MATARAZZO: I did not look it up, sir.

THE COURT: Our circuit is very liberal in submitting evidence of prior or subsequent acts and Deaton indicates the distinction between the rule in this circuit and in other circuits.

MR. SUTTON: Wouldn't that be limited, your Honor, to specific --

THE COURT: In other circuits, the Government must show that it is not introduced solely to show the bad character or criminal disposition of the defendant.

In this circuit it is the other position, it is introducible unless it is designed solely for that purpose.

So that I am going to await the development of the case and I direct the Government not to offer it without alerting me to the fact that it is ready to offer it, and we will argue it at that point.

MR. MATARAZZO: May I make the following point before I leave the subject?

This seizure was before the release of the sealed indictment. It was one week before. I don't know when the indictment actually took place, but I still, -- I maintain once more --

THE COURT: It was filed May 30th.

MR. MATARAZZO: The indictment?

THE COURT: Yes.

MR. MATARAZZO: But there was no action on the indictment as far as the defendant was concerned until afterwards.

THE COURT: I am just telling you when it was filed. It is an act subsequent to the filing of the indictment.

The Government charges that the indictment terminated on or about --

MR. MATARAZZO: May I also point out that nowhere in the affidavits permitting this warrant is there a referral to the indictment.

This warrant was issued on its own merits, nothing to do with this indictment, and to introduce it as evidence in this case, I maintain most vehemently, is highly prejudicial, because they are window-dressing and painting the defendant --

THE COURT: Mr. Matarazzo, I predict that most of the Government's evidence, admissible evidence will prejudice the defendants. It certainly won't help them.

The only question is whether it is relevant to an issue in the case. To talk about prejudicial testimony, really is not an argument.

MR. MATARAZZO: May I ask one question?

Am I to understand that if this case involving the marijuana and a scale has nothing to do with the alleged conspiracy, and cannot be tied up --

THE COURT: They say they are going to introduce evidence that he dealt in cocaine.

MR. KIMELMAN: That is correct.

THE COURT: They are not going to introduce the marijuana, they are going to introduce a scale that showed traces --

MR. KIMELMAN: We will not introduce the marijuana seized.

THE COURT: That showed traces of cocaine on the scale, to show that he dealt in cocaine.

MR. SUTTON: Your Honor has ruled that it will not be introduced until at least we have had another opportunity to view it again.

THE COURT: In other words, under Deaton, to balance the -- what you call prejudice, and the Court uses that term, as I recall it, in the case against the defendant, the relevancy, and whether it is on an issue in the case, whether it will, in effect, show that the defendant knowingly intended -- intentionally entered this conspiracy. If it is not at all related to the issues in the case, then I

will sustain objection to it.

MR. SUTTON: May we move to another motion, your Honor?

THE COURT: Sure.

MR. SUTTON: I make this motion for the record.

We respectfully move to dismiss the first count of the indictment on the ground that the first count of the indictment has failed to set forth facts showing the alleged conspiracy and the entrance of the defendant Bermudez in that conspiracy, and showing any alleged overt acts which allegedly refer or relate to the defendant Bermudez or to the conspiracy itself.

As the indictment presently stands, your Honor, there is no way, based on the allegations which are just generalizations in the language of the statute, for a defendant to be able to protect himself against double jeopardy.

What the acts are that are alleged here are not set forth so that we have no way of knowing what it is that the Government charges, and we have no way of defending ourselves, again, as to what a second charge might deal with.

MR. KIMELMAN: Your Honor, if I may respond to Mr. Sutton:

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If we have one we will talk about it.

(Jury excused at 3:30 p.m.)

(Jury not present.)

THE CLERK: The remaining jurors sitting in the back, you are excused and report downstairs.

(Whereupon remaining jurors exited the courtroom.)

THE COURT: Mr. Kimelman --

MR. KIMELMAN: Yes, sir.

THE COURT: Is the agent that executed the warrant available?

MR. KIMELMAN: Which warrant, your Honor?

THE COURT: Well, the warrant that -- Grand Street.

MR. KIMELMAN: That agent is in New Orleans, your Honor. He was reassigned.

THE COURT: Was he the only one present when the warrant was executed?

MR. KIMELMAN: No, another agent will testify as to what was seized.

THE COURT: I would like to know if the affidavit in support of the warrant accompanied the warrant at the time of execution.

MR. KIMELMAN: Yes, sir.

THE COURT: It may be that that may be the

conclusive factor.

I haven't read the cases --

MR. KIMELMAN: Someone in my office is researching the cases right now, your Honor.

THE COURT: There is one case in the D.C. District -- I don't know whether it is the last word in this circuit -- which says for Fourth Amendment purposes two or more apartments in some buildings are like two separate houses -- I don't know what the facts were in that case -- a single warrant cannot describe an entire building when cause is shown for searching only one apartment. The warrant may properly be construed with reference to an affidavit for purposes of sustaining a particular place if the affidavit is with the warrant and the warrant refers to the affidavit.

MR. SUTTON: Was that issue directly in the case -- directly in the case -- directly, your Honor?

THE COURT: 461 Fed. 2d 468. I don't know the name of the case. I think Mr. Mahler is interested in that.

I think it is a question that deserves some inquiry and if I make a finding one way or the other it should be on the record.

MR. KIMELMAN: The agent who drew the affidavit

was on the search party himself. Whether he had the actual affidavit in his possession or not --

THE COURT: I don't know if that's important.

Some of the cases say that the validity of the warrant is dependent on the facts shown in the warrant and then this one case said that where there are two or more apartments in the same building, then the warrant is saved only if the affidavit accompanies the warrant, and then another condition is that the warrant refers to the affidavit -- in other words, incorporates it.

So, at an early time he's got to have a hearing on it and if you want to do some work on it you may find other cases. It is just a very cursory preliminary investigation. I just want you to know it is a problem.

Are we ready to proceed?

MR. KIMELMAN: I called the chemist from 57th Street about half hour ago.

THE COURT: Is he the first witness?

MR. KIMELMAN: Yes. He is on his way.

MR. SUTTON: May we have a direction that all witnesses for the prosecution be excluded?

THE COURT: All witnesses for all the parties will be excluded, which usually means all witnesses

****

Now, these jurors probably have never been in a courtroom before. I will check to find out how many.

I will tell them verious steps because they are inexperienced.

I take it you all intend to open?

MR. SUTTON: Nope -- brief opening, if anything.

THE COURT: That's what I mean.

I will tell them about the openings and how the case goes and the summation.

You will see what I mean when you see how many jurors have ever been inside a courtroom. I want to tell them the various steps and tell them why you are doing what you are doing.

When do you think we can have the brief and pur hearing on the manner of the execution of the warrant?

MR. KIMELMAN: I should have the research done tonight.

I will check with the agent in New Orleans -- if I can get ahold of him -- and inquire whether your Honor is going to request him to come in.

THE COURT: All I say is, anyone who can testify to the warrant and the accompanying affidavit --

MR. KIMELMAN: One of the agents who executed the warrant is available and I will question him tonight.

(Continued on next page.)

MR. MAHLER: Your Honor is not making that the sole determinative issue?

THE COURT: That is the only thing I see in the case.

This warrant says that this Affidavit happened to be made by Michael So-and-so. So, reference is made to the Affidavit. I don't know if that reference is enough. If so, then I'm satisfied if the cases hold that the Affidavit describing the premises to be searched accompanies the warrants, corrects any defect, if there is a defect, in failure to specify -- That's it. Why go into anything else -- Did the Affidavit accompany the warrant?

MR. MAHLER: Even if you hold that way, you could go beyond the four corners of the warrant. There is no issue as to the building in question --

THE COURT: I find enough to show they were going for that store and basement. You will have an exception, and argue that in the Court of Appeals if your man is convicted.

You have to show me cases.

MR. MAHLER: I cited some of the cases in my memorandum -- some cases concerning affidavits for entire buildings where they do what they do here.

THE COURT: Well, let's see --

MR. MAHLER: One particularly helpful case I cited gives a reference to several cases.

THE COURT: I didn't get to Point Three. I thought One and Two were so weak. I got this as I came on the bench. You raised it for the first time here. I thought I was discovering something when I picked the point up, but at any rate, that's the only point.

I'm sure if the cases hold if the Affidavit can be used to explain the premises to be searched that there's enough said in the Affidavit and that Affidavit indicates it's the store and basement, and not the apartment at all -- the basement being part of the store. So, I have to get the fact question -- It may not have been the Affidavit accompanying the warrant -- and then I'd have the decision to make as to whether it is enough.

Frankly, I don't think it is enough. I think the warrant is defective without it.

It was an apartment house. You say, "building." You don't have the right to search the building. That's not specific enough. You have a store and two apartments above it. What's to be searched? Single ownership, maybe, but then you have to show it. It is not shown here.

MR. SUTTON: Single occupancy.

THE COURT: Occupancy, ownership -- But the point is, they have no right to search the apartment on that

affidavit, and yet the warrant seems to give them the right.

The Fourth Amendment says, paraphrasing it, the warrant must be specific as to the place to be searched, and the objects to be seized.

You certainly would agtee with me that if it said that an apartment house across the street, containing a hundred and fifty apartments, if you said that house, that address, that warrant would be defective. I like to exaggerate the claims to make the point.

Here it was one story and two apartments. They were in separate -- I'll use "tenancies" -- occupancies.

I don't think the warrant is any good.

However, I didn't make a determination yet.

MR. KIMMELMAN: In point of fact, there is no attempt to search anything but the store and the basement.

THE COURT: That's something separate and apart.

I wanted to make sure you could look behind the warrant. I wasn't too sure of that. My Law Clerk found a case which I haven't had an opportunity to read yet, and I may disagree with my Law Clerk when I get through reading it, but it seems to say that when the Affidavit accompanies the warrant, and the warrant supplies a specific lacking in the Affidavit, that's good. That's a

D.C. case, but I'd like to see a Second Circuit case.

MR. MAHLER: Are we discussing whether the Police Officer himself, the Agent, actually brought the warrant with him?

THE COURT: That's right.

MR. MAHLER: Is there any expectancy that he is going to say No?

THE COURT: Well, yes. I believe Police Officers get on the stand and tell the truth, and I know as a lawyer practicing mainly in the State Court and if they had a motion picture showing the incident, you still wouldn't believe it -- I know you have your doubts, but I don't believe everything a Government Agent tells me, but I will state that the incidents of perjury are very negligible, and are the exception rather than the rule.

MR. MAHLER: I can't see any circumstance where an Agent would get on the stand and say, "No. I didn't have my Affidavit with the warrant."

THE COURT: I've been here longer than you, Mr. Mahler, and I don't accept your statement at all.

MR. SUTTON: I see something else that is going to cause a problem.

On top of that table there is a paper, white powder, and all the rest of it, and I object to it being exhibited before the jury.

you listen to Judge Mishler's instructions throughout the trial you will be able to do this and I think you are going to find when you evaluate the evidence against my client at the end of the entire case, you will find that the People, the Government, has failed to prove his guilt beyond a reasonable doubt.

Thank you.

THE COURT: Please call your first witness.

MR. KIMELMAN: The Government calls Jeffrey Weber.

THE COURT: Let the record note that Mr. Abbott is not present in the courtroom.

J E F F R E Y W E B E R , having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KIMELMAN:

Q Mr. Weber, by whom are you employed?

A The Drug Enforcement Administration, Northeast Regional Laboratory.

MR. SUTTON: If it please the Court, would you ask the witness to speak up.

THE COURT: Speak a little louder and I suggest to the jury that they must hear every word spoken, both the question and answer and if you miss a word just

raise your right hand and I'll have the reporter repeat it.

Go ahead.

A (Continuing) The Drug Enforcement Administration, Northeast Regional Laboratory.

Q What is your occupation?

A I am a forensic chemist.

Q For how long have you been so employed?

A Four years.

Q Tell us your duties, sir.

A I analyze substances for the presence of narcotics and dangerous drugs and testify in court as to my findings.

Q What training do you have, sir?

A I have a Bachelor of Science degree in Chemistry from the City College of New York and a Master's degree in Chemistry, Brooklyn College and I participated in a six-month program with the Bureau of Narcotics and Dangerous Drugs in the analysis of narcotics and dangerous drugs.

Q As part of your duties at the Northeast Regional Laboratory have you examined substances for the presence of cocaine?

A Yes, I have.

THE COURT: Before you do that, have you

testified in courts in New York?

THE WITNESS: Yes.

THE COURT: What courts?

THE WITNESS: The Eastern District, the Southern District, Massachusetts, the Northern District of New York, the Western District of New York, New Jersey.

THE COURT: Were you qualified as a chemist?

THE WITNESS: On 60 or 70 occasions.

THE COURT: Would you like to examine on a voir dire?

MR. SUTTON: I'd like to have a sidebar.

I'd like to know if I'm going to have to make a voir dire of this witness and I'd like a sidebar, your Honor.

THE COURT: The jury may be excused.

(Jury excused.)

THE COURT: Do you dispute the qualifications of this witness to express an opinion?

MR. SUTTON: I don't know what his testimony is going to be.

THE COURT: The only question is whether he is qualified as a chemist.

MR. SUTTON: To do what?

THE COURT: To express an opinion as to whether

the substance he analyzed was cocaine.

MR. SUTTON: I'm not ready to concede that.

THE COURT: Then why not cross-examine him before the jury if you're going to challenge the qualifications?

MR. SUTTON: I want to know for what purpose he is being presented here in view of the fact that the alleged substance charged to my client in Count Six, has never been in the possession of the Government There's no testimony whatsoever as to that.

This witness never received the sample or any part of it.

THE COURT: He won't testify as to what he hasn't analyzed. He will only testify as to the material he analyzed.

There was a substance on counsel table that was put away and you objected to it.

You've got a report there, haven't you?

MR. SUTTON: We have a report given to me by Mr. Kimelman.

THE COURT: Is it this witness' report?

MR. KIMELMAN: Yes, sir.

THE COURT: Is that what you're going to testi to?

THE WITNESS: Yes, your Honor.

THE COURT: I don't see the point.

MR. SUTTON: I want to find out if he is directing his testimony in any respect to my client and if not I ask a direction from the Court that whatever the witness testifies to, is not to be used against my client.

MR. KIMELMAN: Your Honor, subject to connection.

THE COURT: That's right. If he is a member of the conspiracy don't you think it is admissible?

MR. SUTTON: Then I'll have to challenge him on his qualifications.

THE COURT: How can you attack the qualifications of a witness who has two degrees in chemistry, as I heard it --

THE WITNESS: Correct --

THE COURT: (Continuing) -- six months in a training course -- how many analyses did you make?

THE WITNESS: Hundreds.

THE COURT: And in addition, testified that he was qualified maybe 60 or 70 times.

If you think you can do it, go ahead.

Seat the jury.

(The jury entered the jury box at 4:30 p.m.)

THE COURT: All right, Mr. Sutton.

MR. SUTTON: Thank you, your Honor.

(Continued on next page.)

Continue.

MR. SUTTON: May we have the 3500 material on this exhibit, your Honor?

THE COURT: Before the jury came in you asked for 3500 material and I told you the law. U.S. against Percevault says you are not entitled to it until the witness completes his direct examination. Isn't that what I told you?

MR. SUTTON: Yes, sir.

DIRECT EXAMINATION

BY MR. KIMELMAN: (Cont.)

Q You say you removed something from inside the package. Tell us exactly what that was.

A The white powder in the plastic bag.

Q You testified that you performed a chemical analysis on that white powder.

A Yes, I did.

Q Have you reached an opinion as to what that white powdery substance is?

A Yes, I did.

Q Could you tell us what that opinion is?

A Yes.

I found the substance in the plastic bag to contain cocaine hydrochloride and lactose; the cocaine being

approximately seven per cent pure.

Q Do you remember exactly how much white powder it contained?

A Not exactly to the gram. I'd have to see my report.

THE CLERK: Document marked Government Exhibit 2 for identification.

(So marked.)

Q Now Mr. Weber, I show you what has been marked as Government's Exhibit 2 for identification and I ask you if you recognize that.

A Yes, I do.

Q Can you tell us how you recognize that exhibit?

A By my signature on the bottom of the report.

Q Could you tell us what that exhibit is?

THE COURT: I can't hear you when you turn around.

MR. KIMELMAN: I'm sorry.

Q Could you tell us what Government Exhibit 2 for identification is?

THE COURT: Objection sustained. Immaterial. Does that refresh your recollection as to the quantity?

THE WITNESS: Yes.

Q Tell us the quantity of cocaine found?

A The quantity is 24.63 grams.

THE COURT: How many ounces is that?

THE WITNESS: Slightly less than an ounce.

(continued next page)

Q Now, after you made your analysis what did you do with the substance that you found in Government's Exhibit 1?

A I sealed it in the plastic evidence envelope, marked Government Exhibit 1 for Identification and placed it in the vault in our laboratory.

Q When you re-sealed it was the same amount of white powdery substance contained in that exhibit as when you first received it?

A There was a small amount less due to the amount I used for my analysis.

Q Do you remember what that amount was that you removed?

A The remainder after analysis is 24.37 grams.

Q You say you re-sealed it?

A That is correct.

Q Is your seal on Government Exhibit 1?

A Yes, it is. The seal is still intact as it was on November 9, 1973.

Q Is the seal on the other side of the envelope in the same condition as when you first saw it on that date?

A Yes, the other side is also still intact.

Q Now, do you know, sir, from your experience, if it is possible, since this envelope is sealed, to open it without either damaging the seal or the envelope?

MR. SUTTON: Objection, your Honor.

THE COURT: How does that fall --

MR. KIMELMAN: Perhaps I can rephrase it.

THE COURT: Yes. Objection sustained.

Q Have you seen many such evidence envelopes in your experience as a Drug Enforcement chemist?

A Yes, I have.

Q Would it be possible to break that seal without you knowing about it?

MR. SUTTON: Objection.

THE COURT: Objection sustained as to form.

What is the mechanism of the seal? Is that a lock seal envelope?

THE WITNESS: No. In July 1973 we did away with lock seal envelopes to enable everyone in the courtroom to see the contents.

THE COURT: Well, what happens?

THE WITNESS: The envelope is received by the laboratory. The bottom has a seal similar to that on the side and the top is sealed by the agent submitting the evidence.

I received the evidence, weighed it to see that it agreed with the weight of the agent and then slit the bottom open and upon completion of my analysis I

put my sticker on the bottom and sealed it with a heat seal.

THE COURT: A heat seal?

THE WITNESS: It is heat that causes the plastic to melt together and this is the condition it is in now.

THE COURT: Go ahead.

Q You told us that after you resealed the envelope -- what did you do?

A I placed it in the vault in our laboratory.

THE CLERK: Item marked Government Exhibit 3 for Identification.

(So marked.)

THE COURT: How did it get to court? Did you bring it here or deliver it to somebody?

THE WITNESS: No.

Special Agent Abbott from the Drug Enforcement Administration picked it up this morning.

THE COURT: When you gave it to him this morning was it in the same condition as when you put it in the vault?

THE WITNESS: He received it from the evidence technician this morning but it is in the same condition now as I put it in the vault.

Q I show you Government Exhibit 3 for Identification and I ask you if you can recognize that.

A Yes, I can.

Q Tell us how you recognize that exhibit.

A My initials are on it and the date 11/9/73 are in several places on the envelope and the words "seal broken," and the word "seal" are also on the envelope.

Q Tell us the circumstances under which you first saw Government's Exhibit 3.

A It is the same as Government's Exhibit 1. I received it 11/9/73 in a lock sealed condition from my supervisor.

Q What did you do when you received it?

A When I received it I broke the seal and performed a chemical analysis on the contents.

Q As a result of that chemical analysis have you reached an opinion as to what the substance found in Government's Exhibit 3 is?

A Yes, I have.

Q Tell us what your opinion is.

A The substance in Government's Exhibit 3 for Identification contains cocaine hydrochloride and lactose and the cocaine is approximately 54 percent purity.

Q Do you recall, sir, exactly how much cocaine

was involved in Government Exhibit 3?

A Not exactly. It was a small amount -- tenth of a gram, maybe less. .07 grams, I believe.

THE CLERK: Document marked Government Exhibit 4 for Identification.

(So marked.)

MR. SUTTON: I didn't hear his last statement.

THE COURT: Read it back, Miss Ginsberg, please.

(Record read by reporter as follows:)

"Answer: Not exactly. It was a small amount -- tenth of a gram, maybe less. .07 grams, I believe."

Q Did you make a report as to your analysis on that --

THE COURT: Objection sustained.

Q You testified that you don't remember exactly how much cocaine was --

A Correct.

Q Would you look at this and see if that refreshes your recollection.

(Document handed to witness.)

A Yes, .37 grams of cocaine.

Q And you have looked at Government Exhibit 4 for Identification; is that correct?

A Yes, I have.

Q Sir, after you made this analysis what did you do with the substance in Government Exhibit 3?

A I re-sealed it in Government Exhibit 3 and placed it in our vault.

Q Did you follow the same procedure you testified to as in Government Exhibit 1?

A Yes.

Q You placed it in the evidence vault of the Regional Laboratory?

A Yes.

Q Is that Exhibit 3 in the same condition today as when you placed it in the vault?

MR. SUTTON: Objection, your Honor.

THE COURT: Overruled. I will allow it.

A Yes, it is.

Q Do you know, sir, of your own knowledge, how that exhibit got to court today?

A Yes.

Special Agent Abbott from the Drug Enforcement Administration picked it up from our laboratory and brought it to court.

THE CLERK: Item enclosed in plastic marked Government Exhibit 5 for Identification.

(So marked.)

Q Sir, once again, I show you what has been marked as Government Exhibit 5 for Identification and I ask you if you recognize it.

A Yes, I do.

Q Could you tell us again how you recognize that.

A By my initials and the date 11/17/73 in several places; the words "seal broken," and that's it -- all on the plastic envelope.

Q Again, would you tell us under what circumstances you first saw Government's Exhibit 5 for Identification.

A I received it from my supervisor in a lock sealed condition in order to perform a chemical analysis on the contents.

Q What did you do after you received Government Exhibit 5?

A Weighed the envelope, opened the envelope and performed a chemical analysis.

Q As a result of that analysis did you reach an opinion as to the contents?

A Yes. The contents are cocaine hydrochloride and lactose and the purity of the cocaine hydrochloride is approximately 25 percent.

Q Do you remember exactly how much of the substance you analyzed, sir?

A I don't remember exactly.

THE CLERK: Document marked Government Exhibit 6 for Identification.

(So marked.)

(Continued on next page.)

Q I show you what has been marked as Government Exhibit 6 for identification and I ask if that refreshes your recollection.

A Yes, it does.

Q Can you tell us now exactly how much of the substance you weighed?

A Yes.

The substance weighed 125.62 grams.

Q Tell us approximately how much that is in ounces.

A Slightly more than four ounces.

Q After you performed the chemical analysis on that exhibit what did you do?

A Re-sealed it in Government Exhibit 5 and returned it to the vault in our laboratory.

Q Examining that exhibit now, is it in the same condition as it was on the day you examined it and re-sealed it?

A Yes, it is.

Q And sir, do you know of your own knowledge how that exhibit got to court today?

A Yes.

This exhibit was also brought to the court by special agent Abbott of the Drug Enforcement Administration.

MR. KIMELMAN: I offer these subject to connection.

THE COURT: Any objection?

MR. SUTTON: I have an objection.

MR. MAHLER: I have an objection.

MR. SUTTON: He is testifying that he knows that it came through Agent Abbott and there is no foundation for that testimony.

THE COURT: He says it is in thesame condition as when he turned it over and I think that is enough.

MR. KIMELMAN: Agent Abbott will testify as the next witness --

THE COURT: Don't say a word.

Objection overruled. It may be marked in evidence.

I am just instructing the jury that Iam holding that it is admissible in evidence and subject to connection.

At this point it has nothing to do with the defendants nor this case. It is only this witness' opinion that the substances are cocaine of quality you heard him describe -- nothing else. If it is not connected I will invite counsel to move to strike and just disregard the testimony.

MR. KIMELMAN: The Government would only offer Exhibits 1, 3 and 5, what has been termed cocaine hydrochloride and not 2, 4 and 6.

MR. MAHLER: May we have copies of 1 and 5?

MR. SUTTON: We don't have 1 and 5, your Honor.

THE COURT: 1, 3 and 5 I understand is the substance. Did you want the reports?

MR. KIMELMAN: They have the reports.

THE COURT: Counsel says you have the reports.

MR. SUTTON: We have 2, 3 and 4, not what he is talking about unless you are going to designate it as something different.

THE CLERK: Government's Exhibits 1, 3 and 5 received in evidence.

(So marked.)

THE COURT: 1, 2 and 6 are the reports and 1, 3 and 5 are the substances.

MR. KIMELMAN: The exhibits counsel is talking about were turned over to them and they are mistaken as to the numbering.

MR. SUTTON: They had different numbering.

THE COURT: Are you completed with this witness?

MR. KIMELMAN: That is correct.

THE COURT: Cross-examination, Mr. Sutton?

instances today. Today was not my best day. The morning session started at eleven instead of ten and the afternoon session was unavoidably delayed until now. But I will keep trying and expect it will be better tomorrow.

All right, Mr. Kimelman, will you call your next witness.

MR. KIMELMAN: The Government calls Barry Abbott to the stand.

THE DEPUTY CLERK: Will you stand there, face me and raise your right hand.

B A R R Y P A U L A B B O T T, called as a witness on behalf of the Government, having been first duly sworn by the Deputy Clerk of the Court, testified as follows:

THE DEPUTY CLERK: Will you state your name and spell it for the record.

THE WITNESS: Barry Paul Abbott, A-b-b-o-t-t.

DIRECT EXAMINATION

BY MR. KIMELMAN:

Q Now, Mr. Abbott, by whom are you employed?

A United States Department of Justice, Drug Enforcement Administration.

Q In what capacity, sir?

A Special agent.

Q How long have you been a special agent, sir?

A Almost four years.

Q And as part of being a special agent, did pu undergo any special training?

A Yes, I did.

Q Will you tell the Judge and jury what special training you had?

A I was sent to B&D, basic training school for ten weeks --

Q Will you tell us what B&D --

MR. SUTTON: I can't hear the witness, your Honor.

THE COURT: Mr. Simon, will you please repeat that.

(Record read.)

THE COURT: Is this witness being qualified as an expert of some kind?

MR. KIMELMAN: No, sir. Just general experience.

THE COURT: Objection sustained.

MR. SUTTON: Thank you, your Honor.

THE COURT: Are you a special agent of the Drug Enforcement Administration?

B A R R Y P A U L A B B O T T , having been previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. KIMELMAN: (Cont.)

Q Mr. Abbott, you told us you had undergone some training at the BNDD school. Will you tell us what BNDD is?

A BNDD is the Bureau of Narcotics and Dangerous Drugs which was the predecessor agency of the Drug Enforcement Administration.

MR. SUTTON: I can't hear him, your Honor.

THE COURT: Will you please repeat it, Mr. Simon.

(Record read.)

THE COURT: Will you try to speak loudly enough so that the last -juror, Alternate Juror Number 2, hears everything you say and that hopefully every body else in the Courtroom will be able to head you.

Q How long was that training?

A 10 weeks.

Q Does that training include a course on identification of narcotic drugs?

MR. SUTTON: Objection your Honor.

A Yes it did.

THE COURT: Overruled.

Q Will you describe that course please?

A Basically we were taught to identify drugs.

MR. SUTTON: Objection, and move to strike,

THE COURT: Continue.

A (Continuing.) Identify drugs by their physical appearance and some brief field test to indicate the presence of the drug we were testing for.

Q As part of your course did you learn how to identify the drug cocaine?

A Yes I did.

MR. SUTTON: Objection your Honor.

THE COURT: Overruled.

Q Now, I started to ask you before --

THE COURT: Well, tell us in detail how the course dealt in identification of cocaine.

THE WITNESS: Well, we were given a small example of actual cocaine in a vial, and it was given to us to examine, and we were told to look at it and make some kind of observations on its physical appearance. And it seemed to me that this cocaine --

MR. SUTTON: I move to strike.

THE COURT: Strike out "it seemed to me."

Did you get lectures on it.

THE WITNESS: Yes.

THE COURT: How long was the school day.

THE WITNESS: 8 hours.

THE COURT: Just on drugs?

MR. SUTTON: I cannot hear him.

THE COURT: Just on drug identification?

THE WITNESS: No sir. Each school day was 8 hours each day. It would be broken up into various courses. I think the total time spent on drug identification was approximately 20 hours.

THE COURT: Were you given other substances to compare with cocaine.

THE WITNESS: Yes.

THE COURT: From everything you learned, what are the physical properties.

THE WITNESS: Cocaine is a --

THE COURT: Of cocaine.

THE WITNESS: Do you mean its appearance?

THE COURT: Yes.

THE WITNESS: It's a white powder, granule, and it glistens. It shines. It looks like new fallen snow.

MR. SUTTON: Objection and move to strike.

THE COURT: Overruled.

THE WITNESS: (Continuing.) As a matter of fact one of the slang terms for cocaine is snow because it resembles it in physical appearance.

MR. SUTTON: I move to strike.

THE COURT: Denied.

All right, go ahead, Mr. Kimelman.

BY MR. KIMELMAN:

Q Does cocaine have any other properties?

A Do you mean physical identification?

Q That you are aware of?

A Not that I can remember, no.

Q You told us before that you had participated in 25 or so investigations?

A Approximately 50 investigations.

Q How many of those investigations involved cocaine?

MR. SUTTON: Objection.

THE COURT: Overruled.

A I would say about three-quarters of the investigations involved cocaine.

(Continued on next page.)

Q That's three-quarters of 50 investigations?

A Of 50 about.

About 35 investigations were cocaine.

Q On those investigations involving cocaine, did you have occasion to observe and examine the cocaine involved?

A Yes.

MR. SUTTON: Objection.

THE COURT: Overruled.

Q Would you tell us what examination and what your observations consisted of?

MR. MATARAZZO: Objection as to the form.

THE COURT: Overruled. I will allow it.

A The cocaine looked like what I was told it would look like.

Q Did you perform any test?

MR. SUTTON: Objection, your Honor.

THE COURT: Overruled.

A I didn't perform a test on all of them. I did on some of them.

Q What other tests did you --

MR. SUTTON: Objection.

THE COURT: Overruled.

You may have an objection to this entire line of questioning, Mr. Sutton. You have an exception, too

MR. SUTTON: Thank you.

A (Continuing) There is a field test, which is conducted by placing some of the suspected cocaine in a small vial of cobalt thiocynate. If the cobalt thiocynate turns blue, it is an indication that cocaine might be present. That is a chemical test.

One of the physical properties of cocaine is that it is a local anesthetic --

MR. SUTTON: Objection.

THE COURT: Overruled. I will allow it.

Q Will you explain to us what you mean by that.

A It would numb a small area of the body, so to test for the presence of cocaine agents would rub a bit --

MR. SUTTON: I must object. There is no proper foundation whatever for his testimony on this score.

MR. MAHLER: I join in the objection.

THE COURT: On how many occasions did you use that test yourself?

THE WITNESS: Five.

THE COURT: On any of those occasions, did you use --

THE WITNESS: The cobalt test?

THE COURT: Yes.

THE WITNESS: That is almost always done as a

matter of course.

THE COURT: When the cocaine was rubbed on a part of your body that was numbed, then you put the substance into the reagent and it turned blue every time?

THE WITNESS: Yes.

THE COURT: And you say you did that on five occasions?

THE WITNESS: To the best of my memory about five.

THE COURT: On every one of those occasions, what did the powder look like?

THE WITNESS: Glistening white powder.

MR. MATARAZZO: I cannot hear him at all.

THE COURT: Go ahead.

MR. MATARAZZO: I will have to get closer. I am not trying to be difficult. I just cannot hear him. He is speaking into the table.

THE COURT: Take a seat right at Government counsel table or move right up to the witness chair, if you like.

MR. MATARAZZO: I will sit here.

THE COURT: Fine.

Q You examined cocaine on possibly 35 occasions;

is that correct?

A Correct.

MR. SUTTON: Objection.

THE COURT: Overruled. I told you you have an exception.

MR. SUTTON: On every ground so there is no problem?

THE COURT: To this entire line of testimony. You object to all of it, your objection is overruled and you have an exception, so you needn't rise each time.

MR. MAHLER: Does that cover all counsel?

THE COURT: Yes, the three of you.

Q When you examined the cocaine on those occasions, did you reach a conclusion as to whether you were dealing in a substance that was in fact cocaine?

A Yes.

Q Were subsequent laboratory tests made of the substance which you believed to be cocaine on those occasions?

A Yes.

THE COURT: I find this witness is qualified to express an opinion as an expert on the identity of cocaine.

Now, that finding does not bind you. It only

permits the witness to express an opinion. You may decide that he is unworthy of belief or does not have the experience and totally disregard it.

But solely as a question of admitting it in evidence before you, I make the finding and solely for that purpose.

MR. SUTTON: Would you explain further that it is a technical point by that instruction and you do not bind this jury as to his qualifications as a so-called expert or as to anything that he may say they have a right to disbelieve it in its entirety?

THE COURT: I thought I said that entire thing only in different language. I won't say it again.

Go ahead.

Q Are you aware of the laboratory results on each of those occasions when you had examined a substance and believed it to be cocaine?

A On most of them, yes.

Q On the occasion when you have knowledge of a laboratory result, was cocaine found on each occasion where you believed it to be cocaine?

A Yes, it was.

Q As part of your experience -- Shall I continue, your Honor?

(Pause.)

MR. SUTTON: Excuse me, your Honor.

THE COURT: All right, go ahead.

MR. KIMELMAN: Thank you.

Q As part of your experience and training, have you learned the jargon of the narcotics trade particularly in the area of cocaine?

A Yes, I have.

Q On the occasions when you were involved in investigations, were terms specific to cocaine and narcotics used?

A Yes.

Q On how many occasions would you say those type of terms were used?

A On almost all of them.

Q Did you have any specific courses in learning narcotics jargon?

A No.

Q This was learned on the basis of your experienc in the field?

A That's correct.

Q Special Agent Abbott, I direct your attention to October of 1973. Did you have occasion to be introduced to one Victor Blanco?

A Yes, I did.

Q Will you tell us when you met Mr. Blanco and under what circumstances.

A I was taken to Mr. Blanco's residence by an informant. We arrived at Mr. Blanco's apartment --

MR. SUTTON: Objection and move to strike.

THE COURT: May I have that.

(Question and answer read.)

THE COURT: The witness is testifying to matters and events that took place when none of these defendants were present.

In our law an accused is chargeable only with what that accused says and does and not anybody says or does or not what anybody says about him. That makes sense because criminal liability is a personal thing. A man is chargeable with his own actions and own words and nobody elses.

There is one exception among others to the rule. These defendants are charged with being part of a conspiracy. A conspiracy is defined as being a partnership in a criminal venture -- a criminal business.

Now, in a legitimate business every partner is responsible for what every other partner does during the term of the partnership and for transactions or

or instigators of the conspiracy.

In determining whether or not a defendant or any other person was a member of the conspiracy, you are not to consider what others may have said or done. That is to say, the membership of a defendant or any other member of the conspiracy must be established by the evidence in the case as to his own conduct, what he himself knowingly said or did,'

With that you may continue, Mr. Kimelman.

MR. KIMELMAN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. KIMELMAN: (Cont.)

Q Special Agent Abbott, I ask you when and where you met Victor Blanco. Will you tell us again, please?

A I met Victor Blanco in his apartment at approximately 4:30 p.m. on October 31st, 1973.

Q Where is this apartment located?

A 97 Clinton Avenue, Brooklyn.

Q who else was present at that time?

A With me?

Q Yes.

A An informant.

MR. STTON: I can't hear, your Honor.

THE COURT: Would you repeat the --

THE WITNESS: An informant.

THE COURT: No. I want the reporter to read it.

(Record read.)

THE COURT: If you can't hear, Mr. Sutton, you can sit over here.

MR. SUTTON: I am perfectly agreeable to sitting here. I thought it might be easier.

THE COURT: All right.

BY MR. KIMELMAN:

Q Did you have a conversation with Mr. Blanco?

A Yes, I did.

Q Would you tell the Court and jury what you said and what he said, if anything?

A Well, I told him I was interested in acquiring an ounce of cocaine. He told me he had a friend who could help me, and he was going to call his friendand tell him to come over to his apartment.

Blanco left and returned a few minutes later. He told me his friend was in a store at the moment and could not get away.

And I then asked him when his friend would be coming.

He said not until after 7 o'clock.

I told Blanco I couldn't wait and I asked him if I could have a phone number where I could reach him. He told me that he couldn't receive calls on his phone, only make outgoing calls. So he asked me for my phone number. I gave him the undercover phone number. And he asked me when I would be there. I told him between 5:30 and 6, I believe. And he said he'd call me later. And then I returned to my office.

Q Now, did you subsequently hear from Mr. Blanco again.

A Yes, I did. He called me later that afternoon. I believe it was about 10 to 6. And told me that his friend would be coming to Blanco's apartment between 7:30 and 8:30 that evening with an ounce of cocaine. He asked me if I would be available that evening. I told him I wasn't sure, and that he should call me when his friend arrived, and if I was available I would come over. We then terminated the phone call.

Q Did Mr. Blanco call you that evening?

A No, he did not.

Q When is the next time you saw Victor Blanco?

A On November 5th, 1973.

Q When and where was that?

A It was --

Q What time?

A It was in his apartment, a little bit after 5 o'clock that afternoon.

Q Had you gone there as a result of a conversation with anyone?

MR. SUTTON: Objection.

THE COURT: Overruled.

THE WITNESS: Yes. The same informant that had taken me to Blanco's apartment before.

MR. SUTTON: Objection and move to strike.

THE COURT: May I have the question.

(Record read.)

THE COURT: May I know the grounds for the objection.

MR. SUTTON: Surely. May I approach the bench.

THE COURT: No. Tell it to me now.

MR. SUTTON: May I approach the bench, your Honor.

THE COURT: The jury may be excused.

(Whereupon, the jury retired from the Courtroom.)

MR. SUTTON: Your Honor, first, it's not responsive to the question.

Secondly -

THE COURT: Why couldn't you say it's not

MR.KIMELMAN: All right.

THE COURT: When I ask you to state the grounds in front of the jury like it's not responsive, I expect you to do that. I don't want any argument. But the grounds must be stated. I am going to ask you to state the grounds each time.

All right, seat the jury.

MR. SUTTON: Even if it's on something that might hurt the --

THE COURT: Not argument, It's irrelevant, no proper foundation.

MR. SUTTON: Hearsay?

THE COURT: Hearsay. Not responsive. Yes.

MR. SUTTON: I see.

THE COURT: I don't want to excuse the jury just to hear you tell me that you think it wasn't responsive.

Seat the jury.

MR. KIMELMAN: Would you find the last question that I asked.

(Whereupon, the jury entered the Courtroom.)

(Record read.)

BY MR. KIMELMAN:

Q Had an appointment been made for you to be there

at that time?

MR. SUTTON: Objection.

THE COURT: Overruled.

THE WITNESS: Yes, there was.

Q What time did you get to Victor Blanco's apartment?

A A little bit after 5 p.m. on November 2nd.

Q What happened as you entered the apartment?

A As I entered two opeople were leaving. I took a seat. Shortly after this another individual entered the apartment. Blanco introduced this individual to me as Pfiefel.

Q Do you now know the real name of the individual who was introduced to you as Pfiefel?

A Yes.

Q Tell us that name.

A Manuel Fiffe

Q What happened after your introduction to Pfiefel?

A Blanco and Fiffe had a conversation in Spanish. And Fiffe handed me a package wrapped in a piece of brown paper bag. I opened the brown paper wrapper and found a plastic bag containing white powder. I opened the bag and examined the white powder and I observed it to be low quality

cocaine.

I conducted some brief tests to determine the presence of cocaine.

THE COURT: Where did you make these tests.

THE WITNESS: Right in Blanco's apartment.

THE COURT: In his presence.

THE WITNESS: Yes. They were not chemical tests.

Q Will you tell us the test.

MR. SUTTON: I didn't hear him.

THE COURT: Mr. Barbella, would you repeat that.

(Record read.)

THE WITNESS: One test was what we call a burn test. You burn a small bit of the cocaine and the amount ofresidue left behind indicated the amount of impurities. The larger the residue the lower the quality of cocaine.

The second test was looking for the numbness after rubbing it on my hand.

And the third test I used was to place some cocaine into a glass of water.

(Continued next page.)

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Q Where did you learn these tests?

MR. SUTTON: Objection.

THE COURT: Overruled.

THE WITNESS: From discussions with other agents.

THE COURT: Do you know whether these tests are customarily used by agents to test for cocaine or quality of cocaine?

THE WITNESS: Yes, sir, they are.

Q Are these tests --

MR. SUTTON: Your Honor, excuse me. Howe go back now to the same right to have general objections so I don't have to rise, because I feel I must object to this line again.

THE COURT: Yes. You have an objection.

MR. SUTTON: So anything relating --

THE COURT: You have an objection to the qualification of this witness to express opinions.

MR. SUTTON: And to anything that he testifies to based upon that alleged qualification.

THE COURT: That's right.

MR. SUTTON: And to anything relating to the cocaine substance or any substance alleged to contain cocaine.

THE COURT: Precisely.

MR. SUTTON: So I don't have to rise again.

THE COURT: Precisely.

MR. SUTTON: In other words, on any level or any grounds on any basis --

THE COURT: That's right.

MR. SUTTON: (Continuing) -- that is appropriate?

THE COURT: That's right, Mr. Sutton.

MR. SUTTON: To be deemed appropriate and --

THE COURT: That's right.

MR. SUTTON: Thank you.

Q Now, on the basis of your experience in dealing with cocaine on these 35 transactions that you testified to, was it your experience that people in the narcotics business make such tests?

MR. MAHLER: I object to the form of the question.

THE COURT: Sustained as to form.

You can ask whether it's custom and practice.

Q Based on these transactions, is it the custom and practice of narcotic dealers themselves to make such tests to determine the purity of cocaine?

MR. SUTTON: Objection, your Honor. I don't

think he has established a foundation for that particular question. I think he was talking --

THE COURT: Objection overruled.

THE WITNESS: Yes. People in cocaine traffic have been known to use these terms.

THE COURT: You saw it done?

THE WITNESS: No, sir.

THE COURT: In any of the sales --

MR. SUTTON: I move to strike it.

THE COURT: I beg your pardon?

MR. SUTTON: He didn't see it done.

THE COURT: Will you permit me to complete, Mr. Sutton.

In any of the transactions that you have had, you never saw it done?

THE WITNESS: No, sir. In the transactions I was on the purchasing end and I would have to test it out. The person who was selling it would not have to test the presence of the cocaine. He knew it was cocaine.

THE COURT: Was it done in the presence of your seller?

THE WITNESS: Had I conducted the test?

THE COURT: No. The test that you performed,

was it done in the presence of those who sold the cocaine to you or the substance that you believed to be cocaine? Did you make the test in front of the people?

THE WITNESS: Yes.

THE COURT: All right. And you know what the custom and practice in the testing of cocaine is as it relates to undercover agents generally?

THE WITNESS: Yes, sir.

THE COURT: And you know what the practice and custom is as it relates to agents of the Drug Enforcement Administration?

THE WITNESS: Yes, sir.

THE COURT: You say that this is a test customarily used?

THE WITNESS: It has been used by agents before.

THE COURT: Is it customarily used?

THE WITNESS: What do you mean by customarily?

THE COURT: Well, isn't it a custom and practice among agents to use it?

THE WITNESS: Yes, it is.

THE COURT: All right. I will allow it.

Q Was there any conversation relating to the

purity of this cocaine?

MR. SUTTON: Objection, your Honor.

THE COURT: May I have the question.

(Record read.)

MR. SUTTON: I believe it's leading.

THE COURT: Overruled on the ground stated.

THE WITNESS: Yes. After examining the cocaine, I spoke to Fiffe using Blanco as the interpreter and told him I didn't think the cocaine was very good and wanted to know if he would vouch for the quality of the cocaine if I was not satisfied.

MR. SUTTON: Your Honor, I rise again most reluctantly, but I just want to make sure that the ground rules are still clear. And that is that none of this testimony is binding on my client until it's been established, as your Honor previously instructed --

THE COURT: Would you like me to read the charge again?

MR. SUTTON: No, your Honor. I just want to understand --

THE COURT: Any time you want me to read it, I will read it, Mr. Sutton.

MR. SUTTON: Thank you.

THE COURT: I think the jury understands it.

Go ahead.

MR. MAHLER: Your Honor, if I may for just a moment. This is all subject to any later motion to strike. I am sure that's what Mr. Sutton was alluding to. General objections all along the third-party conversations -- unless the conspiracy is ultimately --

THE COURT: Go ahead, Mr. Kimelman.

Q What was the response to your comment?

A The response was that there had been other customers and nobody had ever complained before, and I could either take the package or leave it.

I asked Mr. Fiffe through Blanco how much he wanted for the ounce of cocaine. The response was $700. I offered Fiffe $675 and he agreed to the price.

Q Was this conversation being translated by Mr. Blanco?

A Yes, it was.

Q What happened next?

A I sent the informant out --

MR. SUTTON: Objection. I must rise again. Your Honor, now I am sorry, but I have to rise. Now, is this -- has this man testified --

THE COURT: What is the objection?

MR. SUTTON: The objection is -- I sit down,

THE COURT (Continuing) -- as easy as possible. I am going to try to satisfy Mr. Sutton to the utmost. When it reaches a point where I am unable to satisfy him, I will tell him so and in no uncertain terms.

MR. SUTTON: I don't quarrel with your Honor. Your Honor, once you rule, I stop.

THE COURT: Seat the jury.

You're objecting to matters that are of no consequence whatsoever and you can straighten it out on cross-examination. And I said before I strongly suspect that you are doing it to disrupt the direct examination.

MR. SUTTON: No, I am not.

THE COURT: Go ahead.

MR. KIMELMAN: Could I have the last question and answer, please?

(Whereupon, the jury entered the courtroom.)

(Record read.)

BY MR. KIMELMAN:

Q And then what happened?

A I sent the informant out to the Government vehicle where Agent Borst was sitting. I told the informant to ask Agent Borst for the official Government funds.

The informant left, returned within a short period of

time, two, three minutes, and handed me the official funds.

Q What did he hand you?

A I believe it was a total of $750.

THE COURT: What are official funds?

THE WITNESS: Official funds are monies used for the purchase of evidence.

THE COURT: Are the numbers pre-recorded by someone before they are turned over to you?

THE WITNESS: Yes, they are.

THE COURT: All right, go ahead.

THE WITNESS: The informant gave me all of the official funds. I counted out $680 and asked Blanco if he had two fives, change for ten, which he did, and gave it to me. And I then paid Fiffe $675.

During the course of this transaction, the informant asked if he could leave. And I told him he could wait for me in the car.

After I paid Fiffe, Blanco asked me -- Blanco told me that Fiffe's people would have another shipment of cocaine coming in soon and if I would be interested in purchasing some more cocaine. I told him when the shipment came in, he should give me a call and we would take care of business from that point.

I then said good-bye to Fiffe and Blanco,

returned to the Government car where Agent Borst and the informant were waiting for me, and drove out of the area and met with Agent Dovetko and advised him that I purchased an ounce of cocaine for $675.

(Continued on next page.)

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Q Now, did you have the package that Fiffe had sold you with you?

A Excuse me?

Q Did you have -- did you still have the package that Mr. Fifee had given you in your possession?

A Yes. I maintained it in my possession.

Q What did you do with that package?

A Well, Agent Bobst and I returned to our office where we field tested the package, weighed the package, initialed it, placed it in the evidence envelope, and then put it in the night depository.

Q Now, you say you field tested it, could you tell us what that means?

A I put a little bit of cocaine in the cobalt cyniade test and got a positive reaction.

Q When you say positive reaction --

A Well, it turned blue, which would indicate the presence of cocaine.

Q And then you placed this cocaine in the vault; is that correct?

A That's correct.

Q When is the next time you saw this cocaine?

A The next day I removed it from the vault and handed it to the Northeastern Regional Laboratory.

Q Who did you give it to?

A I believe I gave it to Barbara Derazzmo, an employee in the laboratory.

Q Did you fill out any form indicating that you had given it to this woman?

MR. SUTTON: Objection, your Honor.

MR. KIMELMAN: I am sorry, was there an objection?

MR. SUTTON: Yes, sir. I made an objection.

THE COURT: Overruled.

THE WITNESS: Yes, there was a form.

Q I show you what has been marked as Government's Exhibit 2 for identification. I ask you if you recognize it.

A Yes, I do recognize it.

Q How do you recognize that form?

A My signature is on it.

Q Is there any other signature appearing on that form.

THE COURT: May I see it before you go any further?

MR. KIMELMAN: Yes sir.

THE COURT: I won't allow any further questions on the contents of the report.

None of it is admissible. Just trying to prove chain of title, nothing else.

Q After you handed that cocaine that you got from Dovecko, you went to the regional laboratory, and when was the next time that you saw it?

A Excuse me?

Q When was the next time that you saw it?

A The cocaine?

Q Yes.

A I saw it yesterday when I retrieved it from the laboratory.

Q Could you be a little more specific under the circumstances?

A Well, the evidence was needed for trial purposes. I went to the laboratory, receiving permission from the Associate REgional Director to withdraw the evidence for trial purposes.

I went to the laboratory, submitted my claim for the evidence, and I signed a receipt stating that the evidence had been turned over to me for trial purposes.

THE COURT: Did someone turn the evidence over to you?

A Yes.

THE COURT: All to the cocaine to you or what

you believed to be cocaine?

THE WITNESS: Yes sir.

THE COURT: All right, go ahead.

Q When they turned it over to you, was it in the same condition that it had been when you turned it in?

A As far as I could tell, yes.

Q Was the package exactly the same?

A Appears to be the same.

Q Special Agent Abbott, I show you what has been marked as Government's Exhibit 1 for identification. I ask you if you recognize it.

THE CLERK: In evidence.

Q In evidence.

A Yes sir, I do.

Q How do you recognize it?

A My initials are on the plastic bag containing the cocaine. They are on the brown paper wrapper which is the original wrapper.

THE COURT: When did you put your initials on the brown paper bag and on the other envelope?

THE WITNESS: On the evening of the 5th, after I received the evidence.

THE COURT: And before you turned it over to the Northeastern Laboratory?

THE WITNESS: Yes sir.

THE COURT: How did you turn it over? Did you seal it or did you see it sealed?

THE WITNESS: I sealed it in this envelope.

THE COURT: You did the sealing?

THE WITNESS: Yes.

THE COURT: And then turned it over to whom?

THE WITNESS: Barbara Erazzmo.

THE WITNESS: An employee in the laboratory.

THE COURT: I see.

Q Do you see your seal on that Government Exhibit 1 in evidence?

A Yes sir, I do.

Q Is it in the same condition as when you placed it there?

A Yes, it is.

Q Is there any other seal on that exhibit?

A Yes, there is a seal at the bottom of the bag.

Q Did you place that seal there?

A No, I didn't.

Q Do you know how that seal got there from your own personal knowledge?

A Personal knowledge, that's the way the laboratory works.

MR. SUTTON: Objection. I move to strike.

THE COURT: Objection sustained.

Do you know what the custom and practice is at the laboratory on resealing envelopes after tests are made?

THE WITNESS: To my knowledge, they reseal the envelope.

THE COURT: Do you know that to be the custom and practice?

THE WITNESS: Yes sir.

THE COURT: All right.

Q In other words, then, with this additional seal does Exhibit 1 appear to you to be in the same condition as when you turned it in to the Northeastern Regional Laboratory?

A Yes.

Q Now, Special Agent Abbot, when was the next time that you had a conversation with Victor Blanco?

A I received a telephone call from Victor Blanco approximately 1:30 p.m. on November 8, 1973.

Q Could you tell us the conversation that you had with Victor Blanco?

A Blanco told me the people in the factory had a new shipment of uniforms and I should come down to look

at them.

Q When he said that to you, did you understand what he was talking about?

A Yes, I did.

Q Is that in fact some type of narcotics jargon that you are familiar with?

MR. MATARAZZO: Objection, leading the witness.

THE COURT: Overruled. I will allow it.

What other grounds, Mr. Sutton?

Mr. Matarazzo?

MR. MATARAZZO: I said he is leading the witness. He is suggesting --

THE COURT: Is that the same grounds?

MR. SUTTON: I withdraw my objection, your Honor.

THE COURT: Objection overruled.

Go ahead.

THE WITNESS: May I have the question again?

(Record read.)

THE WITNESS: Yes, it is.

Q Based on your experience, what did you take that statement to mean?

A Well, based on my experience and the last conversation I had with Blanco, it meant to me that the

shipment of cocaine was in and that I should examine it with a view toward purchasing another quantity of cocaine.

Q As a result of that conversation, what did you do?

A Well, Agent Borst and I arrived in the vicinity of Blanco's residence at about ten minutes to 3:00 that afternoon.

I went inside and Blanco asked me if I wanted to see the cocaine. I told him I did.

MR. MAHLER: Judge, at this time I am going to make my motion to preclude any evidence concerning this particular statement being offered in evidence.

THE COURT: On what grounds?

MR. MAHLER: The grounds we previously discussed concerning my bill --

THE COURT: Objection overruled.

THE WITNESS: Blanco and I went downstairs and met Agent Borst in the government vehicle. I introduced Blanco to Agent Borst. And Blanco directed us to a corner store.

THE COURT: When you say government vehicle, did it have any insignia on it or any writing on it to indicate that it was a government vehicle?

THE WITNESS: No sir. It was used as an under-

cover vehicle.

THE COURT: What did the --

THE WITNESS: Yellow Volkswagen.

THE COURT: Like any other yellow Volkswagen on the road?

THE WITNESS: That's correct.

Q How exactly did you introduce Agent Borst to Mr. Blanco?

A I said, Red, this is my friend, Biff."

That was it.

He asked me if -- he said, "Is he good people?"

I said, "Sure, no problem with him. You don't have to worry about him."

And we just continued.

Q Does the word "good people" -- is that another example of narcotics jargon?

A Yes.

MR. MAHLER: Objection. I move to strike.

THE COURT: Overruled. I will allow it.

Q Based on your experience what does -- "good people" mean?

A He's on the right side. Well, one way of putting it, he's not a cop, not an informant.

Q You used the term, "Red", who's Red?

A Red is the nickname for Victor Blanco?

Q How did you know that?

A He's a redhead.

Q Is that a name that you came up with or had you heard someone else term him with that?

A The informant told me that was his nickname.

Q All right. Now, they got into the government car, this Volkswagen, and where did you go?

A We proceeded to the vicinity of 293 Grand Street, Brooklyn, New York.

Q What happened when you got there?

A When we got there -- to Havemeyer and Grand Street, Blanco instructed Agent Borst to pull over and apologized for -- he said Agent Borst would have to wait in the car. And he apologized for this.

Blanco and I got out of the government vehicle and walked around the corner and entered a clothing store located at 293 Grand Street.

Q Now, could you describe the clothing store for us? What did it look like on the outside?

A A street level store with the -- the front was with all glass window panes.

Q Did it have any sign above it?

A Yes, it did.

Q Do you recall what the sign said?

A Clothing Center.

Q What type of clothing did you observe being sold?

A Men's wearing apparel.

Q Now, you entered the store. Then what happendd?

A WE entered the store and Manuel Fiffe was behind the counter. So I waved to him as a greeting. And Blanco and Fiffe had a conversation in Spanish. After a few minutes Fiffe, Blanco and I proceeded through a partition in the back room of the store.

We got inside and Fiffe took out a small aluminum package from his sock and opened it up for me to look at. And I observed about a quarter of an ounce of cocaine inside.

And Fiffe spoke to Blanco. Blanco told me that this was a sample of the shipment that had come in.

I looked at the cocaine and I told Blanco, this is much better than the ounce I had purchased and I was satisfied with this.

Q How did you make that determination?

A It appeared to be of a higher quality than the outside purchase.

MR. SUTTON: I didn't hear that.

THE COURT: Mr. Barbella, would you please read it?

(Record read.)

Q Now, what characteristics did this cocaine have that Government Exhibit 1 in evidence didn't have?

A It glistened more than the ounce I had purchased and I noticed a few small rocks in the cocaine.

Q Did you explain to us what rocks mean?

A Rocks are little lumps in the powder.

MR. SUTTON: Did he say "powder"?

Mr. Barbella, would you please read it?

(Record read.)

THE COURT: Go ahead.

Q Do you know what these little lumps are?

A Compressed cocaine.

Q How did you know this?

A From my training and from conversations with other agents.

Q Did you have a conversation with Blanco and Fiffe as to this quarter of an ounce?

A Yes. Blanco told me that an eighth of kilo of this cocaine was left and would be available for me to purchase.

I told Blanco that I would definitely take

an eighth and possibly take a quarter kilo, depending on what my customers wanted.

Q When you say an eighth of a kilo, do you know how many ounces that is?

A An eighth of a kilo is approximately four and a half ounces.

Q Was there any discussion about price?

A Yes. I asked Blanco to ask Fiffe how much he wanted for the eighth. Blanco told me the price would be $2,900.

I told Blanco I thought $2,900 for the eighth was a little steep. And Blanco told me that because of the rocks present in the cocaine I could break the rocks up into powder and further dilute this and possibly make an eighth kilo of cocaine out of the rocks alone, and hence I would still make a profit, and the price was reasonable in view of this.

Q Now, could you explain to the jury what you mean by making an eighth out of the rocks?

A Well, assuming the rock was 5 grams. A 5 gram rock. You can break up this 5 gram rock and dilute it with a cutting agent.

For example, with 25 grams of boric acid, then you would have an ounce of cocaine because of the

5 grams present from the rock.

Q Now, based on your training and experience, you just mentioned boric acid, what else is commonly used as a cutting agent?

A Lactose.

Q In other words, what you are really doing is using these substances to make more cocaine out of what you originally have; is that correct?

A That's correct.

Q After this discussion on price, what happened then?

A Well, I told Blanco that I'd talk price when I came back to purchase and I would probably be back on Monday to purchase the eighth and I expected him to tell Fiffe this.

And Blanco, without talking to Fiffe said, "You don't have to worry about it. You just come on to buy. The eighth will be here. You don't have to place an order."

So I told him, fine, this is okay. We started to leave the store. As we walked into the front of the store where the clothing was, Blanco excused himself for a minute and he and Fiffe went into the closet. I guess they use it as a dressing room.

Q Was it your observation that you heard someone snorting?

A Yes, it was.

MR. SUTTON: Objection.

THE COURT: Will you please rise when you make an objection? What is the ground for the objection?

MR. SUTTON: He said an observation and I don't think he testified that he observed it because what he was doing was he was making the assumption of what they were doing or what anybody was doing. He heard something, he said, that sounded like snorting. He doesn't know what anybody was doing. That is his testimony. And I respectfully submit there is no proper foundation for the question to be answered.

THE COURT: You saw nothing, did you, while they were in the dressing room?

THE WITNESS: No.

THE COURT: You just heard?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q After you heard this what happened?

A Well, after a brief period of time Blanco and Fiffe came out. And I told Blanco to tell Fiffe I would be back.

And Blanco waited in the main part of the store until he came out.

Q Did you hear anything while they were in the dressing room?

A Yes. I heard sounds like snorting.

Q Could you explain to us what snorting is?

A It's inhaling deeply through the nose.

MR. SUTTON: Your Honor, I move to strike.

THE COURT: I will allow it.

Q Based on your experience and training, do you know how cocaine is normally ingested into the system?

A Normally it's ingested by snorting.

(Cont'd on next page.)

He said not to worry about it.

And then he left -- oh, excuse me -- we were about to leave the store and Fiffe called me into the back room. I returned with Fiffe and Blanco to the back room. We walked to a table or workbenchabout midway between the partition and the end of the building. And on the table Fiffe took out the aluminum packet from his sock and he took a small bit of this quarter ounce of cocaine and put it in a piece of aluminum foil and gave it to me.

And Blanco explained that this was a sample so we could see how good the eighth would be.

I thanked Fiffe for the sample. Then Blanco and I left the store. Then we went with Agent Borst in the Government vehicle and we drove Blanco to his residence.

Q Was there a conversation with Mr. Blanco on the way back to his residence?

A Yes. He told me that four kilos of the last shipment had already been sold and that the man who controlled the shipment had received twelve kilos.

Q After you got to Blanco's residence what happened?

A I said good-bye to him and told him I would be around on Monday to purchase some cocaine.

Q And where did you go?

A Then Agent Borst and I then met with Agent Dovatko and advised him we received a sample.

Then Agent Borst and I returned to the office where we processed the evidence. By that I mean we field-tested it, initialled it and sealed it.

Q In fact, did you follow the same procedure that you followed in reference to Government's Exhibit 1 in evidence?

A Yes.

Q Did you place this exhibit in the vault?

A No, I did not.

Q What did you do with it?

A I maintained it in my office.

Q Will you explain that to us?

A I had locked -- I placed the aluminum packet inside an evidence envelope, sealed it, but I didn't place it in the night depository. I locked it in my desk.

Q By the way, Special Agent Abbott, when you were in the store and were receiving the sample did you see individuals in the store?

A Yes, I did.

Q How many people did you see?

A Besides Blanco and Fiffe I saw three other individuals.

Q Are any of those individuals present in the courtroom today?

A Yes.

Q Will you point anyone of those individuals out to us?

A I observed Mr. Diaz in the store that day.

THE COURT: Who is Mr. Diaz?

THE WITNESS: Mr. Diaz is the gentleman seated at the defense table in the red turtleneck.

THE COURT: Will you please rise, Mr. Diaz?

(Defendant rises)

THE COURT: Let the record show that the witness pointed out the defendant Israel Diaz-Martinez.

You may be seated.

(Defendant resumes seat.)

Q Now, you said there were three other individuals. Have you subsequently identified any of the other individuals present that day?

A Yes, one individual.

Q Do you know now that individual's name?

A Yes, Juanita Guzman also known as Juanita Diaz.

Q And the third individual?

A I am not sure who that individual was.

THE COURT: Did you ever see that individual

again?

THE WITNESS: I am not sure.

Q Now, you said you locked the sample of cocaine in your desk; is that correct?

A That is correct.

Q When is the next time you saw it?

A The next day. I removed it from my desk and I hand-delivered it to the regional laboratory.

Q And now, when you removed it from your desk did you examine it?

A Yes. It was in a sealed condition as I placed it in there.

Q Did it appear to be in the same condition as when you placed it in there?

A Yes.

Q You took it to the regional laboratory; is that correct?

A Yes, that is correct.

Q And where did you deliver it to at the regional laboratory?

A To Jeannette Himmel.

Q When is the next time that you saw that sample?

A Yesterday morning.

Q Will you describe the circumstances?

A The same with the ounce of cocaine. I removed the evidence from the laboratory for trial purposes.

Q Now, when you received the evidence from the laboratory did it appear to be in the same condition as when you brought it to the laboratory?

A Yes.

Q Had the packet been opened?

A Yes.

Q And did you observe it to be opened in the same manner as Government's Exhibit 1 in evidence?

A Yes, that is correct.

Q I show you what has been marked as Government's Exhibit 2 in evidence and I ask you if you can identify it?

DEPUTY CLERK: It is 3.

MR. KIMELMAN: I am sorry, Government's Exhibit 3 in evidence.

A Yes, sir, I can identify this.

Q Will you tell the Court and jury exactly how you can identify Government's Exhibit 3?

A My initials are engraved in the aluminum foil. My signature appears on the evidence sticker, on this label, and my initials appear on the evidence sticker after I sealed the evidence envelope.

Q And can you tell us when you engraved your

initials on the items you described?

A On the afternoon of the 8th after I received the exhibit -- excuse me, that's correct -- the afternoon of the 8th. The date that I initialled it is also engraved on the aluminum foil.

THE COURT: May I see that exhibit?

(Document handed to Court.)

THE COURT: All right.

Q And other than the additional seal --

THE COURT: Nothing has been done with that?

MR. KIMELMAN: It has been offered subject to connection.

THE COURT: Is it in evidence?

MR. KIMELMAN: Subject to connection.

THE COURT: Only the physical exhibit is in evidence then, and not the label.

MR. KIMELMAN: Yes.

THE COURT: That is true of all these exhibits?

MR. KIMELMAN: Yes, sir.

Q Other than the additional seal that was put on, does Government's Exhibit 3 in evidence appear to be in the same condition as when you brought it to the lab?

A Yes.

THE COURT: Oh, I was mistaken. I thought you

referred to it as Exhibit 2. It was Exhibit 3 that you referred to.

MR. KIMELMAN: Exhibit 3, yes, sir. I had said Exhibit 2. I believe, your Honor, 1, 3 and 5 are in evidence subject to connection.

THE COURT: I heard you refer to it as Exhibit 2.

MR. KIMELMAN: I did and corrected myself, your Honor.

Q Special Agent Abbott, now when is the next time you met with Victor Blanco?

A November 12, 1973.

Q Do you recall what day of the week that was?

A It was on a Monday.

Q Was that part of your prearranged plan?

A Yes, sir, it was.

Q Where did you meet this individual on November 12th?

A At approximately 2:30 p.m. Agent Borst and I arrived in the vicinity of Blanco's residence.

I went into Blanco's apartment. Blanco greeted me and said, "Well, what can I do for you?"

I said, "I want to buy an eighth."

He said, "All right, wait a minute."

Then he placed a telephone call which was

conducted in Spanish.

At the termination of the call he said, "We have to go to the store to get the eighth."

I said, "No problem."

He said, "Do you have a car?"

I said, "Yes, outside."

He said, "Okay."

I believe he got dressed and then we went down to the Government vehicle where Agent Borst was waiting for us.

Q You say the Government vehicle, is this the same Volkswagen that you used before?

A Yes, it was.

Mr. Blanco and I entered the vehicle and we drove to 293 Grant St, Brooklyn.

Agent Borst parked on Grant St. a short distance away.

MR. SUTTON: May I urge this witness to speak up?

THE COURT: Try to speak a little louder.

A (Continuing) Agent Borst parked the Government vehicle a short distance away from the entrance to the clothing store at 293 Grant St.

Blanco and I exited the vehicle and entered the clothing store.

Fiffe was behind the counter. Blanco and Fiffe had a conversation in Spanish. And Blanco told me that the package had not yet arrived.

I asked Blanco how long I would have to wait. He said, "It should be arriving in a few minutes."

At this point Fiffe dialed a telephone number and apparently got no response. He spoke to no one and hung up the phone. He attempted --

MR. SUTTON: Your Honor, is this a response to any question? I don't recall that there is a question that entitles him to go this far.

THE COURT: Mr. Simon, will you please read the question?

(Record read.)

THE COURT: Strike out everything after that point and ask the proper question.

I ask the witness not to respond beyond the question. Answer only the question.

THE WITNESS: Yes, sir.

Q Did you proceed to the clothing store?

A Yes, sir.

THE COURT: Tell us what happened. Go ahead.

THE WITNESS: Blanco and I entered the

Government vehicle and met Agent Borst. All three of us drove in the Government vehicle to the vicinity of 293 Grant St. where Agent Borst parked the vehicle.

Q What happened next?

A Blanco and I exited the vehicle and entered the clothing store.

Q What did you observe when you entered the clothing store?

A I observed Manuel Fiffe behind the counter.

Q What happened next?

A Blanco and Fiffe had a conversation in Spanish. And Blanco informed me that the package had not yet arrived.

I asked Blanco how long I would have to wait and he said I shouldn't have to wait more than fifteen minutes since the fellow who was supposed to bring the package was in the neighborhood.

Q Then what happened?

A At this point I observed Fiffe dial a telephone number. He spoke to no one and he hung up. He then dialed a second number and spoke to someone and then --

Q Did you observe him dialing the phone?

A Yes, I did.

Q Will you tell us where you were standing?

A I was standing on the customer side of the

counter. The telephone was on a ledge against the wall behind the counter.

Q Were you able to see Manuel Fiffe dialing a number?

A Yes, I was.

MR. MAHLER: I object to this.

THE COURT: May I have the question, Mr. Simon?

(Record read.)

THE COURT: On what ground, Mr. Mahler?

MR. MAHLER: I do not think there is any foundation.

THE COURT: He said he saw him -- direct evidence -- dial a telephone number.

Objection overruled.

Q Were you able to observe the phone number that Manuel Fiffe dialed?

MR. SUTTON: Objection.

THE COURT: Is there an objection?

MR. SUTTON: I object.

THE COURT: I can't hear your objections, Mr. Sutton. On what ground?

MR. SUTTON: I object on the grounds it is leading.

THE COURT: Overruled.

MR. SUTTON: It calls for a conclusion.

THE COURT: What was the question, Mr. Simon?

(Record read.)

THE COURT: You say that question calls for a conclusion?

MR. SUTTON: Yes, it does.

THE COURT: A conclusion of what, Mr. Sutton? What is the conclusion that the witness is asked to draw from that question?

MR. SUTTON: Well, the point that I am making is this, your Honor: If he will tell us where he was, the distance he was, the steps that he took --

THE COURT: The question was did you see Fiffe dial a number? That calls for a yes or no answer, doesn't it?

Objection overruled.

Answer it yes or no.

THE WITNESS: Yes.

Q And what number did you see Manuel Fiffe dial?

A 387-7180.

Q After he finished this conversation then what happened?

A Well, Blanco told me the package should be arriving in a short time.

Q And what did you do?

A I told Blanco I would wait in the car with Agent Borst. So I left the store, met Agent Borst, and told him to leave the area.

Q Do you remember approximately what time this occurred?

A Approximately 3:20 p.m.

(continued next page)

BY MR. KIMELMAN:

Q Well, did you leave the area?

A Yes, we did.

Q Where did you go?

A A few blocks away.

Q And what happened when you got a few blocks away?

A One of the surveillance agents, Agent Chellino, met with us. I told Agent Chellino that --

MR. SUTTON: Objection.

THE COURT: I want the ground. And please stand so I know you are making an objection. What's the ground?

MR. SUTTON: It is hearsay.

THE COURT: May I have the question?

(Record read.)

THE COURT: Strike out "I told Agent.." -- who is that?

THE WITNESS: Chellino. C-h-e-l-l-i-n-o.

BY MR. KIMELMAN:

Q Did you have a conversation with that surveillance agent?

THE COURT: Just yes or no.

A Yes.

Q What did you tell Agent Chellino?

MR. SUTTON: Objection.

THE COURT: Objection sustained. It was already objected to on the ground of hearsay.

MR. KIMELMAN: I am sorry, your Honor. I didn't know that was the ground.

Q After you had the conversation with Agent Chellino, what did you do?

A I returned to the vicinity of the clothing store.

Q And then what happened?

A Well, Agent Borst and I sat there for a period of time, maybe twenty minutes. We observed a few individuals enter the store. I left the Government vehicle and walked up to the front of the clothing store and Blanco came out.

Q What did Mr. Blanco say to you, if anything?

A Mr. Blanco said the package still had not arrived.

Q Did he tell you why?

A He told me that the person who was supposed to pick up the package was locked out of the apartment.

Q Now, did you observe anybody in the store at this time?

A Yes, I did.

Q And who did you observe in the store.

A Mr. Diaz.

Q Did you have any conversation with Mr. Blanco about Mr. Diaz?

A Yes, I did.

Q Will you tell us what that conversation was?

A I asked Blanco who -- pointed to Diaz, who that was -- Blanco told me that was the boss of the store.

Q And then what happened?

A Blanco suggested we have a cup of coffee. And I agreed to this.

We crossed the street to go to a nearby luncheonette.

I stopped at the Government car and told Agent Borst what I was doing --

MR. SUTTON: Objection.

THE COURT: On what ground?

MR. SUTTON: Well, I thought he was going to say what he was going to tell him. I was trying to anticipate.

THE COURT: Don't tell us the conversation between you.

THE WITNESS: I told him what I was doing and that he should stay there.

BY MR. KIMELMAN:

Q Well, approximately at what time did this occur?

A About 3:45 p.m.

Q What was the next thing that happened?

A Well, after we had our coffee I left Blanco and told him I would be leaving the area.

I rejoined Agent Borst in the Government vehicle and we left the area.

Q Well, where did you go?

A Just driving around.

Q Did you have a conversation with anybody while you were riding around?

A Yes. At one point Agent Chellino --

Q Don't tell us what he said --

A Agent Chellino pulled up alongside of us, waved us over, and I had a conversation with him and returned to the vicinity of the clothing store.

Q Now, did you return to the clothing store as a result of the conversation that you had with Agent Chellino?

MR. SUTTON: Objection, your Honor.

THE COURT: Overruled. I will allow it.

A Yes, I did.

Q What happened when you got back to the clothing store?

A Agent Borst parked almost opposite the clothing store on the opposite side of the street. I got out of the car

and walked over to the front of the clothing store and waited outside.

Q Approximately what time was this?

A 4:15, I think. Fiffe saw me outside and waved for me to come in to the store.

I entered the store and Fiffe and I walked in to the back part of the store to the bench I described earlier.

Q And then what happened?

A Took a pHisoHex box, still motioning me to follow him, and walked over to the wall and there was a trap door. And he --

Q You say a pHisoHex box. Will you tell us what you mean by pHisoHex box?

A It would mean a small box which was used as a container for the pHisoHex product.

THE COURT: What is pHisoHex?

THE WITNESS: A commercial preparation.

THE COURT: A what?

THE WITNESS: A commercial preparation.

BY MR. KIMELMAN:

Q Will you describe the general size of the box?

A Maybe four inches high and an inch and a half on each side. So that if you are looking at the top it appears as a square.

THE COURT: That is a tradename for some solution that sometimes is used on skin as a cleanser? Isn't that what it is?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. KIMELMAN:

Q You went to the back room and then what happened?

A Fiffe still motioning me to follow him, and he walked across the floor and lifted up a trap door and descended down a ladder and motioned for me to follow him, which I did.

Q Where did this take you?

A To the basement.

Q Will you describe this basement for us?

A Well, it was -- when I got to the basement there were no lights on. I just stood at the bottom of the ladder trying to get my bearings. And Fiffe was walking away and took a left. When he hit the bottom of the ladder, he took a left and walked off and turned on the light. Once I saw where the light was I walked over in that direction.

Q What happened after that? Have you finished describing the basement?

A All I could see was this cubicle where the light

was. Inside the small cubicle was a big table.

Q When you say a cubicle, do you mean an enclosed area?

A Yes.

Q Was it enclosed on all four sides?

A I believe so, except for the entranceway.

Q Now, did you enter into this cubicle?

A Yes, I did.

Q What happened then?

A Piffe left the plilsoflex box on the table and motioned for me to stay. And he went up the ladder. A few minutes later he came down the ladder with Blanco.

Q And then what happened?

A Blanco told me that the reason he had not been there is because he was out on the street looking for me, and that just after I had left him the last time, an individual arrived with the package.

Q This is what Blanco told you?

A That is correct.

Q And then what happened?

A Then Piffe opened the plilsoflex box, took out a plastic bag containing a white powder. He spread out the white powder on a piece of aluminum foil and said something to Blanco in spanish. And Blanco said, "Go ahead.

it. Check it out."

I inspected the cocaine and noticed a few rocks were in there.

I told them it looked pretty good and I would take it.

Q You said you noticed a few rocks. Are these the rocks you were talking about before, these lumps of pure cocaine? Is that correct?

A Yes, that is correct, there are very small rocks.

Q And the presence of these rocks, what did that indicate to you?

A It indicated the presence of cocaine.

Q Did it indicate anything to you about the quality of the entire substance that you were going to receive?

A Well, from what I observed it appeared to be of better quality than the ounce I had purchased and somewhat less than the sample I had received.

Q Did you make any test on this cocaine that was given to you?

A Yes, I believe I tried the burn test.

MR. SUTTON: Objection and move to strike.

THE COURT: What is your best recollection?

THE WITNESS: That I did use the burn test.

THE COURT: I will allow it.

BY MR. KIMELMAN:

Q That is the test that you described to us before that you used on the ounce? Is that correct?

A Yes.

Q What are the results of this test?

A It indicated to me that there was some cocaine present.

Q Was there any discussion about the price of this cocaine?

A Yes. I told Blanco I would take this particular cocaine.

I asked him to ask Fiffe how much the price was.

Blanco's response was twenty-nine hundred dollars

I told Blanco to tell Fiffe I would give him twenty-six hundred for this one-eighth. And Blanco spoke a few words in spanish. There was a conversation.

Blanco said, "No, not twenty-six."

I said, "All right, tell him I will give him twenty-seven hundred dollars and he should give me a break on the price because the ounce that he sold me wasn't that good."

Blanco had a conversation with Fiffe, Fiffe in spanish with Blanco, and Blanco said, "The price has got to be twenty-nine hundred dollars. It is not his stuff. He is only a front man. He can't do anything about the price."

Q Now, he said he was only a front man and he couldn't do anything about the price?

A That is correct.

Q Now, is the term front man also part of narcotics jargon?

A Yes, it is.

Q Did you hear that term before?

A Yes.

Q What did you understand it to mean?

A A front man was what you might term just a delivery boy. He was just delivering the package. It wasn't his to sell or to change the price. He was selling it just for somebody else, for the man who actually had possession of the package.

Q Well, in point of fact he was an agent of someone else?

MR. SUTTON: Objection.

THE COURT: Overruled. I will allow it.

A Yes.

THE COURT: Is that what it means?

THE WITNESS: Yes.

A (continuing) So, after that -- do you want me to continue?

Q Let me ask you another question. After he told

you what Blanco said, that Fiffe was only the front man, what did you say then?

A I said if he can't lower the price he can't lower the price. I will take the package anyway.

I instructed Fiffe with a motion of my hand to wrap up the package.

I put the cocaine back in the plastic bag, resealed it. At this point, I reached in my pocket for a small scale and Fiffe took out a small postage scale, put the package on it and spoke to Blanco.

Blanco said, "Four and a half ounces. Right?"

I said, "Yes, that is it, four and a half ounces."

Q Did you observe the cocaine being weighed?

A Yes, I did.

Q Did you see that it weighed four and a half ounces on that scale?

A Yes, I did.

Q Now, will you tell us again --

MR. KIMELMAN: Strike that.

Q How much is four and a half ounces in kilograms?

A In kilograms, it would be a one-eighth kilo or a hundred and twenty-five grams.

Q Now, after this cocaine was weighed, what happened?

A Fiffe said, "Money."

THE COURT: Of course, a kilogram means one thousand grams, doesn't it?

THE WITNESS: That's correct.

THE COURT: One-eighth of a thousand is a hundred and twenty-five grams?

THE WITNESS: That is correct.

A (continuing) Fiffe said, "Money."

And I told Blanco to tell Fiffe that the money was with my partner upstairs in the car, and he should come upstairs and he would pay him.

He agreed to this. I put the package in my pocket and all three of us went upstairs.

Q When you went upstairs, did Mr. Blanco ask you anything?

(continued on next page)

MR. KIMELMAN: Strike that question.

Q Was there any discussion about further shipments?

A Yes. When would I be interested in purchasing something else.

Q And how did you respond?

A I told him when another shipment came in to give me a call and I would come down and look at it.

Q Now, when you got upstairs -- I take it you had to go up through the trap door again?

A Yes.

Q When you went upstairs what happened?

A Mr. Blanco, Fiffe and I entered the front part of the store where the clothing was and motioned to Fiffe to come out to the car. And he followed me out.

Q Well, where did you go?

A We went to the Government car where Agent Borst was waiting for us.

Q Now, when you got outside the store did you observe anybody inside the store?

A On my way out I observed some people in the store.

Q Have you since identified the people you observed in the store?

A Yes, I have.

Q Can you tell us who those people are?

A Well, Mr. Diaz was still in the store as I was going out. And I observed another individual lounging at the cashier's counter.

Q Have you subsequently identified and do you now know that individual's name?

A Yes, that is Louis Miranda.

Q And Mr. Diaz and this individual that you now know as Louis Miranda were in the store as you left it with Mr. Fiffe?

A That is correct.

Q You left the store with Mr. Fiffe. Where did you go again?

A Went to the Government car.

Q And what happened when you went to the Government car?

A Fiffe and I entered the car and I instructed Agent Borst to pay Fiffe $2900.

Q Did he do so?

A Yes he did.

Q Then what happened then?

A Fiffe counted out the money.

Then he made a motion with his hand like he was dialing a telephone and he said, "Tomorrow?"

And I shook my head, "Si si, yes, tomorrow."

Then Fiffe left the vehicle and returned to the store.

Q And what did you do?

A I went back to the store and asked Blanco if he wanted a ride home. And he told me, "No."

I said, "Okay, I will be in touch with you," and rejoined Agent Borst in the Government vehicle. We then left the area and met with surveillance agents -- I think one agent, Agent Chellino, and advised him that we had purchased a package.

MR. SUTTON: Objection. Move to strike.

THE COURT: Strike out I had advised him that we had purchased a package. The jury is to disregard it.

Q Did you have possession of the cocaine that you had just purchased?

A Yes I did.

Q After you met Agent Chellino where did you go?

A Agent Borst and I returned to our office.

Q And what did you do when you got to the office?

A Field tested the cocaine. Got a positive reaction. We weighed it. Initialed it. Dated it. And sealed it in an evidence envelope and placed it in the safe for overnight keeping.

Q Did you follow the same procedure as you followed with Government's Exhibits 1 and 3 in evidence? Is that correct?

A That is correct.

Q Other than to place it in the vault?

A Yes. The processing was the same, that is the weighing, initialing and sealing.

Q When is the next time you saw this one-eighth of a kilogram that you had purchased?

A Well, the next day I removed it from the safe and brought it to the regional laboratory.

Q When you removed it from the safe did it appear to be in the same condition as when you placed it in the safe the day before?

A Yes it did.

Q When you took it to the regional laboratory who did you give it to when you got there?

A Jeannetta Himmel.

Q When was the next time you saw this one-eighth of a kilogram?

A Yesterday.

Q Can you tell us again the circumstances under which you saw this again?

A I withdrew it from the laboratory for trial

purposes.

Q When you withdrew it from the laboratory did it appear to be in the same condition as when you brought it to the laboratory?

A Yes.

Q That would be with the exception, as you mentioned, of Government's Exhibits 1 and 3 with the additional seals that were placed there, is that correct?

A Yes.

Q I show you what has been marked as Government's Exhibit 5 in evidence and I ask you to identify it.

A Yes, I can.

Q Can you tell us how you identify that exhibit?

A My initials are on the plastic bag containing the cocaine.

My initials are on the evidence sticker sealing the envelope. And my signature appears on the label on the face of the evidence envelope.

Q Can you tell us when you placed your initials in the various spots that you have described?

A Yes, November 12, the same day I purchased the one-eighth of cocaine.

Q Does this Government's Exhibit 5 now appear to you to be in the same condition as when you originally

took it from the lab yesterday?

A Well, the only situation I notice is that the bag is stapled shut where mine was secured by a fastener.

Q Do both seals appear to be intact?

A Yes sir.

Q Will you tell us the next time that you received a call from Victor Blanco following the purchase on the 12th?

A It was the afternoon of the 20th of November 1973.

Q And did you talk with him on the phone or did you meet him?

A He called me on the phone and told me I should come down and see him.

MR. SUTTON: Your Honor, may I respectfully urge that the Prosecutor be more careful about leading questions.

THE COURT: You make objection to it and I will rule on it. I do not find that question leading. If that is the reason for the objection the objection is overruled.

Q Will you tell us what Mr. Blanco told you in that telephone call?

A He told me, "The people in the factory had new uniforms."

DIRECT EXAMINATION

BY MR. KIMELMAN: (Cont.)

Q In other words, he used the same words that he had used in the previous phone call to you?

A Yes.

Q What did that mean to you?

A Meant that there was a shipment of cocaine for my inspection.

Q What did you respond to Mr. Blanco?

A I told him I'd see him later that day.

Q Did you in fact see Mr. Blanco later in the day on November 20th?

A Yes, I did.

Q Will you describe the circumstances of that meeting?

A Well, Agent Borst and I drove to Blanco's residence. Agent Borst remained in the car. I went inside Blanco's apartment.

Blanco asked, was I interested in it. And I told him I wanted another eighth. He then placed the phone call, spoke to somebody in Spanish, and told me Piffe would be coming over in a little while. I told him I was going out and I would return shortly after.

Q Did you meet him?

A Yes, I did.

Q Do you recall approximately what time you left?

A I think a quarter to 3. Somewhere around that time.

Q After Blanco told you that Fiffe would be coming over and you left the premises, where did you go?

A I went back in the Government agent vehicle with Agent Borst and we left the area.

Q Did you subsequently return to Mr.Blanco's apartment?

A Yes, I did.

Q Do you recall approximately what time?

A About a quarter after 5.

Q What happened when you got there?

A I believe Fiffe was already there.

THE COURT: Try to speak a little louder if you don't mind.

THE WITNESS: I believe Fiffe had already arrived when I entered Blanco's apartment. We then had a conversation. Blanco was the interpreter. I told Blanco I was interested in purchasing another eighth.

MR. SUTTON: Objection, your Honor.

THE COURT: Was Blanco translating the English

to the Spanish and then Fiffe's Spanish into English? Is that what he was doing.

THE WITNESS: As far as I could determine, yes.

THE COURT: And you are just telling us what Blanco said; is that right?

THE WITNESS: Yes.

THE COURT: You are not doing any translating on your own?

THE WITNESS: No.

THE COURT: All right.

MR. MAHLER: I move to preclude on the bill of particulars.

THE COURT: Motion denied. Objection overruled.

All right, Mr. Kimelman.

MR. KIMELMAN: I am sorry. Could that last response be read back by the reporter.

THE COURT: All right. What was the question? What happened then.

MR. KIMELMAN: I believe the reporter --

THE COURT: All right, go ahead.

(Record read.)

THE COURT: Tell us what occurred.

MR. KIMELMAN: I want the witness' response to

be read by the reporter.

THE COURT: Will you please read it back.

(Record read.)

BY MR. KIMELMAN:

Q Did Mr. Blanco respond to this?

A HE spoke to Mr. Fiffe in Spanish. Mr. Fiffe spoke to Mr. Blanco in Spanish. Mr. Blanco told me that Fiffe only wanted to deal in quarters or half kilo packages.

I said I would also deal in those size packages, but based on my experience I was not entirely satisfied with the cocaine. I knew what the cocaine was when I purchased it. But I felt that Fiffe could do better. I told Mr. Blanco to explain this to Fiffe.

Q Now, when you say a half kilo, approximately how much is that in ounces or pounds?

A Half kilo is 1.1 pounds. It's about 35, 36 ounces, I believe.

THE COURT: 1.1 pound?

THE WITNESS: Half kilo is 1.1 pound.

THE COURT: Well, half kilo isn't 36 ounces, is it?

THE WITNESS: 35 -- I don't remember.

THE COURT: Isn't a half kilo about 18 ounces?

THE WITNESS: Yes. Excuse me. I'm thinking of

a full kilo.

THE COURT: All right.

THE WITNESS: Excuse me.

BY MR. KIMELMAN:

Q Now, you said that you, too, wanted to deal in one-quarter or one-half kilo packages?

A Yes.

Q What was the rest of the conversation?

A But based on the past cocaine I had purchased, I didn't want to spend money for a quarter or a half kilo package to get relatively low purity cocaine. And I told Blanco to explain this to Fiffe.

They had a conversation. And Blanco told me that if I bought a bigger package, I'd get higher purity. I told Blanco that first let me see the purity in the small package to know that he was capable of delivering high quality cocaine and then I would move on to a higher quality -- a bigger size package.

So Blanco spoke to Fiffe. They had a conversation. And Blanco said to me that Fiffe had a man who had a half kilo of high quality. And I asked Blanco if Fiffe thought it was possible for me to purchase an eighth directly from this half kilo package. And Blanco said, "I will ask him."

Then they had a conversation in Spanish. And then Fiffe went to make a phone call. And Blanco told me he was calling the man up now to see if my request was possible.

Q Now, did you observe Mr. Fiffe make this phone call?

A Yes, I did.

Q Would you tell us where you were standing?

A Well, Blanco's telephone was located on his dresser. And when Fiffe walked up to the telephone he had a telephone number on the back of the business card laying on the dresser. So while he was engaged in conversation, I looked over his shoulder, saw the card laying on the dresser.

Q Had you seen Mr. Fiffe take this business card out of his person in some way?

A Well, I saw him fumbling through his wallet.

MR. SUTTON: Objection.

THE COURT: Overruled.

THE WITNESS: I saw him looking through his wallet and take out something.

Q And the next thing you saw was this business card address; is that correct?

A That's the only thing I saw on the dresser.

Q Now, were you able to observe the telephone number written on the back of this business card?

A Yes, I was.

Q Will you tell the Court and jury what that number is?

A 657-1358.

Q Now, did Mr. Fiffe have a conversation on the telephone while you were observing this business card?

A Yes. He spoke to somebody in Spanish.

Q After he terminated this conversation, did Mr. Blanco say anything to you?

A While it was going on, I instructed Blanco to tell Fiffe to tell his man that I did not have enough money with me to purchase a half kilo and that I was only going to inspect the package that night.

Blanco said he would tell Fiffe of this. Upon the termination of the call, Fiffe spoke to Blanco, and Blanco told me that an appointment had been set up for me to inspect the package at a nearby business later that evening.

Q Did he tell you what time the appointment had been made for?

A He said it was made for about 6:30.

Q Did Mr. Blanco give you any instructions as to what you were to do?

A Well, I told him I was going out. And he told me I should be back by 6 and we would proceed from there.

Q Now, about what time was it when this conversation occurred?

A This was about a quarter to 6.

Q So you were to return about 15 minutes or so later?

A That's correct.

Q Now, did you leave the premises?

A Yes, I did.

Q Where did you go?

A I met with Agent Borst. We left the area. And I met with Group Supervisor Seneca.

Q Did you have a conversation with Group Supervisor Seneca?

A Yes, I did.

Q After that conversation, what did you do?

A Agent Borst and I returned to Blanco's residence.

Q Approximately what time?

A About 6:15.

Q What happened when you got there?

A Blanco asked me if I was ready to go. I told him I was. So Blanco and Fiffe and I left his apartment. Fiffe got in his car. Blanco got into the car with Agent Borst and I and we followed Fiffe.

Q What kind of a car did Mr. Fiffe have?

A It was a Mercury.

Q Do you know approximately what year or what color?

A It was either a '65 or '69 green Mercury.

Q So Mr. Fiffe and Mr. Blanco were in this Mercury?

A No. Mr. Fiffe was by himself. Mr. Blanco was with Special Agent Borst and me.

Q And you were in the Government car; is that correct?

A That's correct.

Q Is this the same yellow Volkswagen?

A That's correct.

Q What happened next?

A We followed Mr. Fiffe.

Q Where did you follow him to?

A To the vicinity of Gates and Knickerbocker Avenue in Brooklyn.

Q What happened when you got to that vicinity?

A Mr. Fiffe pulled over and then Agent Borst pulled over. Blanco said Agent Borst would have to remain in the car, which he did. Blanco and I got out and walked with Fiffe on Gates Avenue. We came near a store and Fiffe entered, and Blanco and I stayed outside for a few minutes

until Fiffe motioned to us to come into the store.

Q You are standing outside the store?

A A short distance away from the store.

Q Now, will you describe the store for us, the outside?

A Very narrow store. Two window panes of glass with a doorway in the middle.

Q Was there any name on the store?

A Yes.

Q Will you tell us the name?

A Estrella Record Shop.

THE COURT: How do you spell Estrella.

THE WITNESS: E-s-t-r-e-l-l-a.

Q Do you happen to recall what the address of that was?

A 1428 Gates Avenue.

Q You say you were waiting outside the store?

A Very short time. Maybe a minute.

Q And then what happened?

A Fiffe motioned for us to come in. And then Blanco and I followed Fiffe and we walked into a back room of the store.

Q Could you describe this room for us?

A Very small room.. Had a refrigerator and a

sink with a counter next to it, some chairs, table.

Q Was there anybody inside the room?

A Yes, there was.

Q How many people?

A Besides Mr. Fiffe and Mr. Blanco and myself?

Q Yes.

A Three others.

Q Do you recognize anybody who was in the back of the record store that night as being present in the Courtroom today?

A Yes, I do.

Q Could you identify them for us?

A Mr. Vivas and Mr. Bermudez.

Q Point those gentlemen out as the individuals.

A Mr. Vivas is the gentleman seated to the right of Mr. Diaz. Mr. Bermudez is seated next to Mr. Sutton.

THE COURT: Let the record show that the witness pointed out the defendants Eduardo Bermudez and Jorge Vivas.

Q You say there was a third individual in the store. Has any identification been made of that individual?

A No.

THE COURT: Do you recall ever seeing that third party again.

THE WITNESS: Yes.

THE COURT: All right.

Q After you entered the back of the store, what happened?

A I observed Mr. Vivas on the telephone. And after he completed the call he went out into the -- in the front part of the store. And the -- after a short period of time the unidentified gentleman left the store. So Mr. Fiffe, Blanco, myself and Bermudez were left in the store.

Q You say the store. Doyou mean the back room?

A The back room of the store, I mean. I asked Blanco who Bermudez was. Blanco spoke in Spanish to Bermudez and they had a conversation, Bermudez and Blanco. Blanco said to me, "You don't have to worry about anything. He is the boss. He's okay."

Q Blanco told you that Mr. Bermudez was the boss; is that right?

A That's what he said.

At this point Fiffe pointed to Bermudez and said, "Colombiano;" pointed to Blanco and said, "Puerto Rico;" and tapped himself and said, "Cubano."

Q Do you know what Colombiano means?

A Means he was a Colombian national.

(Continued next page.)

Q And Mr. Fiffe pointed to Mr. Blanco and said, "Puerto Rico"?

A Yes.

Q And Mr. Fiffe tapped himself and said, "Cubano," is that correct?

A That's correct.

Q Do you know what Cubano means?

A Native of Cuba.

Q And then did Mr. Fiffe do anything?

A Mr. Fiffe held out his hand and spoke to Blanco. And Blanco told me I should shake Fiffe's hand so that Bermudez would know that Fiffe and I were friends and did business together before. So I said, sure, and shook Fiffe's hand.

Q Now, did Mr. Bermudez and Mr. Blanco appear to have a conversation?

MR. MATARAZZO: Objection to the form of the question as having a conversation.

THE COURT: May I have that question?

(Record read.)

THE COURT: Sustained as to form.

Q Did you see Mr. --

THE COURT: Did you hear any conversation?

THE WITNESS: They spoke in Spanish.

THE COURT: All right.

Q Now, did Mr. Blanco ask you anything?

A Yes. He asked me if I was interested in purchasing some marijuana.

Q What did you respond?

A I asked if it was Colombian and Blanco said it was.

And I said, "Well, for me to be interested it would have to be pretty big weight."

At this point Mr. Bermudez said 300, 500 pounds. I said, "Well, that's pretty big weight . I will consider it."

THE COURT: Wait. Before you go any further, the jury is excused.

How much longer are you going to be on this direct?

MR. KIMELMAN: Your Honor, I don't expect much more than 15 minutes or 20 minutes at the utmost.

THE COURT: I see. We will take a five minute recess at this point.

(Whereupon, the jury retired from the court-room.)

THE COURT: What other questions are you going to ask on this marijuana deal?

DIRECT EXAMINATION

BY MR. KIMELMAN (continued):

Q Agent Abbott, was there a time when you left the store?

A Yes, approximately 7:30 I told Blanco to tell Bermudez that I was going out to see my partner, who was waiting in the car, to tell him the package hadn't shown up yet and just tell him that everything was all right.

MR. SUTTON: I respectfully object on the ground that it is not responsive to the question, and I move to strike both portions of the answer which are not responsive.

THE COURT: May I have the question and the answer?

(Question and answer read.)

THE COURT: Strike out the answer as not responsive.

Try it again.

MR. KIMELMAN: Yes, sir.

Q Agent Abbott, did you have a conversation with Mr. Blanco?

A Yes, I did.

Q Did that conversation occur approximately 7:30 p.m. in the store?

A Yes, it did.

Q Will you tell us what the conversation was?

lla A I told Blanco to tell Mr. Bermudez that I was going outside to see my partner, to tell him that the package hadn't shown up yet and that I was still waiting for the package and I would return as soon as I saw my partner.

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Q I am sorry. Did you leave the store then?

A After giving -- after Mr. Blanco said to Bermudez, I did leave the store.

Q Where did you go?

MR. SUTTON: Your Honor, may I respectfully ask that -- I didn't hear the question and the answer to that question.

THE COURT: Mr. Barbella, will you please give us the question and the answer.

(Record read.)

MR. SUTTON: May I respectfully move to strike the question and the answer to those portions that are not responsive?

THE COURT: May I have it again.

(Record read.)

THE COURT: Did you leave the store then? That calls for a yes or no answer.

THE WITNESS: Yes.

THE COURT: Strike everything else out.

Q Where did you go?

A I went to the Government vehicle.

Q What happened when you got to the Government vehicle?

A I told Agent Borst what was going on inside.

Q Then what did you do?

A I returned to the store.

Q What happened when you returned to the store?

A I waited.

Q Did you have any conversation while you waited?

A Just general conversation.

Q And then what happened?

A At one point Mr. Vivas came into the back room and made a phone call and he left again.

At approximately 7:45 I told Blanco I couldn't wait any longer and I was going to leave.

Q What did he respond?

A Well, Mr. Blanco and Mr. Bermudez had a conversation in Spanish.

MR. SUTTON: Objection, your Honor. And I move to strike it.

THE COURT: On what grounds?

MR. SUTTON: On the grounds that it is not responsive.

THE COURT: May I have the question and answer.

(Record read.)

THE COURT: Denied. I will allow it.

THE WITNESS: And then Mr. Blanco said to me,

"He wants you to wait here for the package because when the package arrives you are going to see how good it is and you will be very satisfied and he will have another customer."

I said, "All right, I will wait, but let me go out and tell Biff what's going on."

At that point I left the store, went to the Government vehicle. I told Agent Borst the package had still not arrived and I would be going into the store to wait a little longer.

Q Did you return to the store again?

A Yes, I did.

Q What happened when you returned to the store?

A I waited until approximately 8 o'clock.

Q Anyone else come in the back of the store?

A No.

Q Did you have any conversation with Mr. Blanco about the delay?

A Well, I expressed my disgust, told him I was disgusted that the package hadn't arrived. I was told to be there at 6:30 and here it was at 8 o'clock and no package showed up and I was going to leave.

Q Did Mr. Blanco give you any explanation as to why there was a delay?

A He told me the people had to bring the package in from Long Island and that was probably the delay. He indicated to me that Mr. Vivas had made a telephone call.

MR. MATARAZZO: Objection. That is a conclusion. Unless he shows how --

THE COURT: Strike out, "he indicated to me he made a telephone call."

Tell us what the conversation was.

THE WITNESS: Mr. Blanco said, "You saw yourself he was on the phone. He didn't get any response. The people must be on the way."

I said, "Well, I don't care. I am tired of waiting. I am going to leave."

At this point Blanco said, "Wait a minute. Somebody is there. This must be it."

Q What time was this?

A Just about 8 o'clock.

Q After Mr. Blanco said that, did anything happen

A Yes. An individual I hadn't seen previously that evening walked into the back room of the store. He looked around and walked right out.

Q Have you been able to make an identification of that individual?

A No, I have not.

Q Had you ever seen that individual again?

A No, I have not.

Q Now, after this individual looked in the back room and left, what happened?

A At this point Mr. Vivas walked into the back room. I noticed he was wearing a brown leather coat that he was not wearing when I had seen him earlier. I looked at Mr. Bermudez and I said, "Who's going to handle this?"

He pointed to Mr. Vivas.

Q Did you say, "Who's going to handle this," directly to Mr. Bermudez?

A Yes, I did.

Q Did he respond directly to you by pointing to Mr. Vivas?

A Yes, he did.

Q And then what happened?

A Mr. Vivas took out a brown paper bag and placed it on the table.

Q What happened after that?

A I opened this paper bag and observed two plastic bags containing white powder inside it. I opened one of the plastic bags and started to examine it.

After looking through it, I said, "Boi Bean."

Q What does that mean?

A It's very good.

MR. SUTTON: I didn't hear that. What was that?

THE COURT: Mr. Barbella, will you please read it.

(Record read.)

Q Was there any response to that statement by you?

A Everybody laughed.

Q Now, did you examine the substance contained in those two plastic bags?

MR. MATARAZZO: Objection. It's been answered.

THE COURT: Overruled. I will allow it.

THE WITNESS: No. Just the one bag.

Q What did you do?

A I sifted through it with a spoon. I Observed there was a large rock in it.

Q Now, when you say rock, did you explain that term to use before? When you say rock here, do you mean a --

MR. MATARAZZO: Objection. He's leading the witness.

THE COURT: Objection sustained as to form.

Q Will you tell us what you mean by rock.

MR. MATARAZZO: Objection. The witness has stated to this Court on ten occasions what he means by rocks.

THE COURT: We will have it again.

You may answer.

THE WITNESS: This rock was a piece of fused powder. It was solid. I'd say about the size of my knuckle bent around like that. Maybe a little bit bigger.

Q Based on your experience and training which you have told us, what did that mean to you?

MR. SUTTON: Objection, your Honor.

MR. MATARAZZO: Objection.

MR. SUTTON: As to form.

THE COURT: May I have the question.

(Record read.)

THE COURT: Overruled. I will allow it.

THE WITNESS: Well, it appeared to me to be a solid rock of cocaine.

I had a tablespoon I was sifting the cocaine with and I hit the rock with the spoon in an attempt to break it, which sometimes happens. And this rock did not break.

Q What did that indicate to you?

A That it was --

MR. MATARAZZO: Objection. He's asking for a conclusion.

THE COURT: An expert may express an opinion. He's testifying as an expert. I will allow it.

THE WITNESS: It indicated to me it was a solid mass of cocaine.

Q Did you do anything else with the substance?

A Yes. I took a small bit and rubbed it on the area of my hand between the thumb and index finger.

Q What happened after you did that?

A That area of my hand became numb.

Q Based on your experience and training, what did that mean to you?

A It indicated it was cocaine.

Q Now, after -- did you do anything else to the substance?

A No.

Q Now, after you examined the substance, was there a conversation?

A Yes.

Q Will you tell us what that conversation was.

A I told Mr. Vivas I liked it, but I only had enough money with me to purchase an eighth. I asked if I could have an eighth kilo.

Q What did Mr. Vivas respond?

A Mr. Vivas said, no, he would not sell less than

a half kilo.

Q Is this conversation in English or in Spanish?

A In English.

Q You don't speak Spanish, do you?

A Only a few words here and there.

Q Mr. Vivas responded to you in English or Spanish?

A He responded to me in English.

Q After you told Mr. Vivas that you only had an eighth, would you tell us again what he responded.

A Well, to step back a minute. First, I asked him how much for the half. He told me it was 12,000. Then I told him I didn't have that much. I only had enough for an eighth. I asked if I could have the eighth. He said, no, it's got to be the half.

I said, "Well, why does it have to be the half?"

He said, "I don't want to break up the package."

I said, "Well, it's already in two separate bags. It's already broken up."

He said, "Well, in that case, you can have a quarter for 6500."

I said, "I haven't got the money for a quarter right now. I have the money for an eighth right now. And I will take that much from you."

Mr. Vivas said, no, he wouldn't break up that package. He said, "If you come back by midnight, you can have the quarter for $6500.

At that point I told him I didn't think I would be able to get $6500 by midnight. I didn't want to lose the package. I told him I'd give him the money for the eighth, take the quarter and pay him the balance of the money when I was able to sell the package or obtain the money. And he turned this option down.

At this point it appeared I wasn't going to get anything. I asked --

MR. SUTTON: Objection and move to strike, your Honor.

THE COURT: May I have that.

(Record read.)

THE COURT: Motion to strike denied.

I will not allow a long narrative that the witness just gave come before the jury and then entertain a motion to strike because it's not responsive.

If counsel want the testimony stricken, I expect counsel to rise immediately when counsel realizes that it's not responsive.

Go ahead.

MR. KIMELMAN: Your Honor --

THE COURT: Please try to respond to the question and nothing else.

THE WITNESS: Excuse me, your Honor. Mr. Kime asked me to relate the conversation I had.

THE COURT: Is this all part of the conversation?

THE WITNESS: Yes, it is. Negotiations over t package on the table.

THE COURT: What was the last sentence that you read?

(Record read.)

THE COURT: I will allow it to stand.

MR. KIMELMAN: Do I understand the testimony stands?

THE COURT: That stands.

Q Now, Special Agent, did anyone else in the roo handle cocaine in those packages?

MR. MATARAZZO: Objection to the use of the word cocaine in the question.

THE COURT: Overruled. I will allow it.

MR. SUTTON: May I respectfully object on the grounds that it is leading.

THE COURT: Overruled on the grounds stated.

By handle, do you mean touch it?

MR. KIMELMAN: Yes, sir.

THE COURT: Hold it?

MR. KIMELMAN: Yes, sir.

THE COURT: All right, go ahead.

THE WITNESS: No one actually held the package. They were placed on the table and there they remained while I inspected them.

MR. SUTTON: Your Honor, well, can I --

THE COURT: What?

THE WITNESS: Inspected.

MR. SUTTON: I didn't hear it.

THE COURT: Mr. Barbella, will you please repeat it.

(Record read.)

Q Not the package, Agent Abbott. Did anybody handle the substance inside the package?

A Yes. Mr. Blanco and Mr. Fiffe.

Q What did they do with that substance?

A They snorted some of it.

Q Will you tell us again what snorting means.

A Snorting is to ingest something by inhaling deeply through the nose.

Q Is snorting the normal method of ingesting cocaine?

A Yes, it is.

Q You personally observed Mr. Blanco and Mr. Fiffe snorting the substance in that package which you believed to be cocaine?

A Yes, I did.

Q After these negotiations with Mr. Vivas, what happened then?

A As I said, I could see the negotiations were not going to be fruitful. I asked Mr. Vivas --

MR. SUTTON: Objection.

THE COURT: Strike out, "after these negotiations I saw the negotiations weren't going to be fruitful."

What is the question now?

MR. KIMELMAN: I asked him after the negotiations -- the conversation about negotiations, what happened next.

THE COURT: Just tell us what happened.

THE WITNESS: I asked Mr. Vivas if I could have a blow for the guy in the car.

Q What -- could you tell us what a blow means.

A A blow is a small amount of cocaine that one would take. Just a small amount for personal use. Very small amount.

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DIRECT EXAMINATION

BY MR. KIMELMAN: (Cont.)

Q How did Mr. Vivas respond?

A He said, no. He wrapped up the packages. He put them in the brown paper bag.

Q And then what happened?

A Well, then I told Mr.Blanco to explain to Bermudez and Vivas what -- that I thought I was only coming to inspect the package and not to purchase it, and there had been some kind of misunderstanding.

Then there was some conversation. Piffe spoke to Blanco, and Blanco told me that Piffe could arrange for me to purchase this cocaine up until 4 p.m. the next afternoon.

Q The same cocaine that was on the table in front of you?

MR. MATARAZZO: Objection. That is leading. If ever a question was leading, that one is.

THE COURT: Objection overruled.

Q You may answer.

A Yes.

Q Was there any further conversation in the store?

A Well, I told Blanco to apologize for me for the

misunderstanding that had been caused. And there was some conversation and Blanco, Piffe and I left the store.

MR. MATARAZZO: Excuse me. May I have that last answer repeated because it was garbled. I didn't get it.

THE COURT: Mr.Barbella, will you please read it.

(Record read.)

MR. MATARAZZO: I object to it. The answer is not responsive.

THE COURT: May I have the question again.

(Record read.)

THE COURT: Strike out the answer.

Yes or no.

THE WITNESS: Yes, there was.

Q Did there come a time when you left the store?

A Yes.

Q Now,did you have a conversation with Victor Blanco the next day?

A Yes, I did.

Q Would you relate that conversation to us?

A I told Blanco I was still interested in purchasing the cocaine I had seen the previous evening and requested that he get me in touch with Bermudez.

Q And what did he respond?

A He said he'd try.

Q When is thenext time you would talk to Mr. Blanco?

A Later that afternoon.

Q Would you relate that conversation?

A I told him I had enough money to purchase a quarter kilo of cocaine and to get in touch with Bermudez and advise him of this.

Q And did you tell him how much money you had?

A I believe it was $6,000.

Q What did Mr. Blanco respond to that?

A He said he'd call me back.

Q When was the next time you talked to Mr. Blanco?

A Mr. Blanco called me back later that afternoon and told me that the deal had to be for a half kilo only. He would not deal in less than a half kilo.

Q Did he say who would deal for less than a half kilo?

A He didn't mention any names.

MR. SUTTON: I object and move to strike on the grounds that the question is leading.

THE COURT: Overruled on the grounds stated.

THE WITNESS: He didn't mention any names.

MR. SUTTON: On the further ground that there has been no proper foundation for the question.

THE COURT: Do you want me to give the limiting instruction again.

MR. SUTTON: Sir.

THE COURT: The limiting instructions. Do you want me to give the limiting instructions.

MR. SUTTON: All right, your Honor, I will withdraw the objection.

THE COURT: By limiting instructions, I mean the instructions I gave you when conversations outside the presence of the accused is chargeable to the accused. The whole instruction I gave you about what a conspiracy is, the Government must prove beyond a reasonable doubt the existence of the conspiracy, one of the party to the conversation was a member of the conspiracy, the conversation was during the term of the conspiracy and in furtherance of the objectives of the conspiracy, and then chargeable against an accused only if the Government proves beyond a reasonable doubt that the accused knowingly and willfully entered into the conspiracy.

That's what I mean by limiting instructions. It's not chargeable against any accused unless the

Government fulfills all those conditions.

Go ahead.

MR. KIMELMAN: All right, your Honor.

BY MR. KIMELMAN:

Q You said that they wouldn't sell for less -- they wouldn't sell less than a half kilo; is that correct?

A That's correct.

Q Did he offer you any other additional cocaine?

A He told me he could find another source for a quarter kilo probably by 11 o'clock that evening. And I told him I was not interested in another source. I like what I had seen the previous evening and I wanted that.

Q And what did Mr. Blanco respond?

A Well, he said, "It's got to be half. Nothing less."

I said, "Maybe we can do something after the holidays," meaning the Thanksgiving holiday. And we terminated the call.

Q When is the next time you saw or talked to Mr.Blanco?

A Oh, I saw him Friday, November 23rd.

Q Where did you see him?

A In his apartment.

Q Approximately what time if you recall?

A Sometime afternoon. After 12 noon.

Q Did you have a conversation with Mr. Blanco at that time?

A Yes, I did.

Q Will you tell us what you said to him, please?

A I told him I was still interested in meeting Bermudez, do a deal with him.

MR. SUTTON: Your Honor, may I ask that the question and answer be read back. He dropped his voice and I lost the last part.

THE COURT: Mr. Barbella, will you please read back the question and answer.

(Record read.)

Q What did he respond to that?

A He told me he could not contact Bermudez directly. He had to go through Fiffe. And he could not contact Fiffe on this particular day.

THE COURT: We will suspend at this point. The case will continue tomorrow promptly at 10 o'clock.

Again, I will ask you to come into the Courthouse by 9:30, 20 of 10, register first downstairs and then come to the jury room adjoining the Courtroom.

Please don't talk about the case. And when you

that that is the instruction.

I think we are ready now. Mr. Abbott, will you please resume.

B A R R Y P A U L A B B O T T , called as a witness, having been previously duly sworn by the Clerk of the Court, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. KIMELMAN (continued):

Q Now, I believe, Agent Abbott, when you left off yesterday you were about to describe a meeting you had with Victor Blanco on the 23rd of November.

Now, could you tell us again did you meet with Victor Blanco on November 23rd, 1973?

A Yes, I did.

Q Will you tell us where that meeting occurred?

A In Blanco's apartment.

Q Do you recall approximately the time of that meeting?

A About twelve o'clock in the afternoon.

Q Did you have a conversation with Mr. Blanco?

A Yes, I did.

Q Will you tell the Court and jury what you said to Mr. Blanco at that time?

A I asked Blanco if he had been able to get in tou

with Mr. Fiffe for the purpose of putting me together with Mr. Bermudez again.

Mr. Blanco told me he couldn't contact Fiffe because the store was closed for the Thanksgiving holiday.

I told Blanco there was no great hurry because I still had not obtained enough money to purchase a half kilo of cocaine. And I would contact him after the weekend.

MR. SUTTON: Your Honor, I rise respectfully to ask if the witness could please try to make an effort to speak a little louder. It is a little difficult for me to hear him.

THE COURT: Well, try to do that.

BY MR. KIMELMAN:

Q Is that substantially the conversation that you had with Mr. Victor Blanco that day?

A Yes, it is.

Q When is the next time you met with Victor Blanco?

A I saw Mr. Blanco on November 26, 1973.

Q Where did that meeting occur?

A I went to Blanco's apartment.

Q That is at 97 Clinton Avenue, is that correct?

A That is correct.

Q Approximately what time was this meeting?

A Approximately 2:30 in the afternoon.

Q Did you have a conversation with Mr. Blanco at that time?

A Yes, I did.

Q Will you tell us what that conversation was?

A I asked him if he had been able to get in touch with Mr. Fiffe regarding Mr. Bermudez.

Q And what was his response?

A He said he had not at that point and he would be seeing Mr. Fiffe later on that day.

Q Did you in fact meet with Mr. Fiffe later on that day?

A Yes. I suggested to Mr. Blanco that we go see Fiffe at that exact minute and he agreed.

Q Did you go to see Mr. Fiffe?

A Yes. Agent Borst was with me. We went in the Government car and proceeded to the clothing store where Mr. Fiffe was employed.

Q When you got to the clothing store, what did you do?

A Mr. Fiffe was in the store.

Q Were there other people in the store at that time?

A Yes, there was.

Q Will you tell us who that was, if you know?

A Mr. Diaz and another gentleman subsequently

identified as Mr. Ralph Diamond.

MR. MAHLER: Excuse me. Is this witness referring to this defendant, Martinez, Diaz-Martinez?

THE WITNESS: Yes, that is correct. That is who I am referring to.

THE COURT: You have been calling the defendant Diaz-Martinez, Diaz, is that right?

THE WITNESS: Mr. Diaz, that is what I know him as.

MR. MAHLER: Will the Court instruct the jury that the indictment name is Israel Diaz-Martinez and his real name is Diaz-Martinez?

MR. KIMELMAN: Your Honor, if I may, the witness knows the defendant --

MR. MAHLER: I object to this and move to strike.

THE COURT: Well, strike both statements out. I read the caption and I read the names of the defendants. And I don't have to repeat it.

Go ahead, Mr. Kimelman.

BY MR. KIMELMAN:

Q Now, did you have a conversation with Mr.Blanco and Mr. Fiffe at that time?

A Yes, I did.

Q Will you tell us what you said to them?

A I told Blanco to tell Fiffe that I was interested in purchasing a large quantity of cocaine from Mr. Bermudez.

Q Was there any response?

A Mr. Blanco and Mr. Fiffe had a conversation in spanish. Mr. Blanco said to me Fiffe wants to know how much you are talking about so he can tell this other man.

Q What did you respond?

A I told him I was interested in obtaining two kilograms of cocaine.

Q Was there a response to that statement?

A Yes, Blanco and Fiffe had a conversation in spanish and Blanco said, "Fiffe thinks the man can handle that much."

Q Did he mention any names?

A No.

Q Just said the man?

A That is correct.

Q Was that substantially the conversation that you had on November 26th?

A Yes.

Q Now, when is the next time that you met with Victor Blanco?

A On November 29th, 1973.

Q Where did that meeting occur?

A In Blanco's apartment.

Q When you say Blanco's apartment, you are referring to 97 Clinton Avenue, is that correct?

A Yes.

Q Do you recall about what time that meeting took place?

A I don't recall the exact time.

Q And who was present at the meeting?

A A female known to me as Juanita Guzman and also known as Juanita Diaz.

Q Did you have a conversation with these individuals?

A Yes, I did.

Q Will you tell us what you said?

A Mr. Blanco asked me what he could do for me. And then indicatir Juanita I said, "Is she O.K.?"

And he says, "Yes, you can talk in front of her."

And then I sat down and told Blanco that I was still interested in meeting Mr. Bermudez for the purpose of purchasing cocaine, and I thought Mr. Piffe was dragging his feet in attempting to get me back together with Mr. Bermudez.

(continued on next page)

MR. SUTTON: Your Honor, objection. Move to strike in regard to the nonresponse portion of the answer that he thought, etc.

MR. KIMELMAN: If I may --

THE COURT: Did you say you thought? Is that what you told Blanco?

THE WITNESS: Yes.

MR. SUTTON: Could we have the question and answer read?

THE COURT: May I have the question, please?

(Testimony read.)

THE COURT: Objection overruled.

Q Were you interested?

Is there anything else to that conversation?

A Do you want the whole conversation?

Q Where you left off, after you said that you thought that Mr. Blanco was draging his feet.

A Well, at that Juanita joined the conversation.

Q Did you see Juanity Diaz before?

A Yes.

Q Where?

A I saw her in the clothing store located at 293 Grant Street.

Q On what occasion was that?

A On November 8, 1973.

Q I did not hear the date.

A On November 8, 1973.

Q Was that the date that you had gone into the clothing store to get the sample?

MR. SUTTON: Objection.

THE COURT: Overruled.

A That's correct.

Q What did Juanita say to you?

MR. MAHLER: May we understand what date we are talking about on this portion?

MR. SUTTON: May I call it to your attention that there is no proper foundation to the question in the testimony already given?

THE COURT: I overruled the objection.

I assumed it was on the grounds of leading.

Was that the ground?

MR. SUTTON: That was one.

THE COURT: Do you have another?

MR. SUTTON: There was no proper foundation for this particular question in the testimony already given.

If I could approach the bench --

THE COURT: No, I do not see any reason to

argue that.

MR. MAHLER: May we establish the time and place?

THE COURT: Mr. Mahler, you have the right of cross examination. If it is not clear in your mind, you can ask the question and ask him to fix the date then.

Go ahead, please.

Q Will you tell us what Juanita Diaz said to you?

A Juanita Diaz told me that her husband was the boss of the clothing store and that she was aware of what was going on and that she --

MR. MAHLER: I object to this. I would move for a side bar.

THE COURT: The jury may be excused.

(The jury leaves the court room.)

MR. MAHLER: I would like to make application for a mistrial.

This is an absolute act of bad faith as to what is being done now. I made motions directed to it. There is nothing contained in this office's Grand Jury Minutes which depicts any conversation with Juanita Diaz, where she talks about her husband and the clothing store.

ask that I be allowed to move the table --

THE COURT: No, we will work it out.

MR. MAHLER: Take a seat at the end of the table with your client. That will resolve that problem.

All right, now we have a little togetherness.

MR. KIMELMAN: May I ask the last question and answer be repeated?

(Testimony read.)

THE COURT: You understand that this conversation between this witness and Juanita Gomez or Diaz is her statement and the mere fact she says that she is the wife of the fellow who runs -- or the boss of the clothing store -- doesn't make it so, it is her statement.

It is not chargable against any of the defendants unless all those conditions that I alluded to yesterday are fulfilled.

Q Did you ask her anything?

A No, not at this point.

Q Did you have any conversation with her further?

A Yes, she said that she would attempt to get Bermudez' phone number and give it to Blanco so he could contact Bermudez directly without having to go through

Fiffe.

Q Was there any further conversation?

A Yes, I told her that I'd be very satisfied with this and I told her there was no hurry in trying to get in touch with Bermudez for a 2-kilo deal, because I had another source for quarter kilo amounts of cocaine.

At this point she said, "If you want quarters, come to the store. We can take care of you."

Q Is that another term that is used in narcotics jargon?

A Yes.

Q Based on your experience and training, what did you understand that to mean?

A A quarter kilogram of cocaine.

Q She said "If you want quarters, you could come down to the store and she will take care of it"?

A Yes.

Q And that meant the purchase of quarter kilos of cocaine?

A Yes.

MR. SUTTON: Could the witness testify what it means rather than be led into it by the prosecutor?

THE COURT: Overruled.

Continue, please.

Q Was there any other conversation on that date that you recall?

A Yes, I spoke to Blanco that evening and he told me he had not yet heard from Juanita.

Q Drawing your attention to April of this year, did you have occasion to go back to Estrella's Record Store?

A Yes, I did.

Q Tell us the circumstances of your going back -- first the date.

A April 3, 1974, approximately 5:30 p.m.

Q Tell us what happened when you got to the record store.

A I walked into the store and observed Mr. Bermudez behind the counter.

Q Is this the same record store where you observed the half kilogram of cocaine on November 20th--

MR. MATARAZZO: Objection.

THE COURT: Overruled.

A That is correct.

MR. MATARAZZO: I renew my objection on the ground that the United States Attorney has no right to say that something is cocaine. He is not testifying.

THE COURT: Overruled.

DIRECT EXAMINATION

BY MR. KIMELMAN (Cont'd):

Q Did you have a conversation with Mr. Vivas on April 3, 1974?

A Yes, sir, I did.

Q Would you tell us what that conversation was?

A First I approached Mr. Vivas and I asked if he read me and he said he did not.

Then I briefly described the events of November 20th and mentioned the fact that Fiffe and Blanco were there and then he said he read.

I told him that I was looking for something nice and asked if he could help me out. He sort of nodded and I said "I am looking for a half kilo. Can you do that" --

Q When you say he nodded --

A Up and down in an affirmative manner. I said "I need a half kilo. Can you help me?" Then he walked out from behind the counter and he said, "There's nothing around right now."

I said, "Well, the people are still in the business, aren't they?"

He said, "Yes."

I said, "I don't need it now. I just, you know, want to know if it's available."

Then he said too many people -- a big mistake.

I said, "Yes, there was." I said, "There was a mistake made. You thought I was coming to buy. I was only coming to look. There was a misunderstanding."

I asked that "Fiffe contact you himself and explain the misunderstanding to you so we could get to go and do some business."

I said, "I'm here now. I'm apologizing for what happened that night. I want to forget that and I want to start off right."

Q All this last conversation was with reference to the November 20th meeting; is that correct?

A Correct.

Q Any further conversation?

A He accpeted my apology and he said he didn't think there was anything available.

MR. SUTTON: Respectfully move to strike on the ground it is a conclusion.

THE COURT: Did he say "I accept your apology"?

THE WITNESS: Yes.

THE COURT: Substnatially in those words?

THE WITNESS: Not in those words, but the meaning was he accepted the apology.

THE COURT: Overruled.

Can you tell us exactly what he said?

THE WITNESS: I said, "I apologize."

He said, "All right."

THE COURT: Continue.

BY MR. KIMELMAN:

Q Was there any further conversation?

A He didn't think there was anything available but he would know in a few days. I asked him if I should return and he said yes.

I said, "All right, I will be back on Friday."

He said, "Fine, come back."

Q Did you return to the Estrella Record Store on Friday?

A Yes, that was Friday, April 5th.

Q Did you meet Mr. Vivas on April 5th?

A Yes, I did.

Q Did you have a conversation with him on that date?

A Yes, I did.

Q Would you tell us what that conversation was?

A As I walked into the store, Mr. Vivas shook his head back and forth like this, indicating: No, there was nothing in yet.

I said, "All right. I'm patient. I'll wait.

Will you contact me when something comes in?"

And he said, "Yes."

I said, "You want my phone number?"

He said, "Yes," and I gave him the undercover telephone number.

I said, "All right. You won't forget to call me when something comes in?"

He said, "I'll call you," and I left the store.

MR. KIMELMAN: I have no further questions, your Honor.

THE COURT: We will take a five-minute recess and then Mr. Sutton will start his cross-examination.

(Recess taken.)

THE COURT: The reporters have been complaining that you drop your voice.

MR. KIMELMAN: I will try to keep it up.

THE COURT: Maybe move the lectern further back so it will encourage the witness to speak up.

Please seat the Jury.

(Jury present.)

THE COURT: You may proceed.

(Witness resumed the stand.)

(Continued on next page.)

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CROSS-EXAMINATION

BY MR. SUTTON: (Cont.)

Q During the course of your alleged inspection, during that one minute period of time, is it your testimony that you did not understand any of the words in Spanish that were taking place between Mr. Blanco and Mr. Fiffe?

A That is correct.

Q How soon after that alleged one minute of time did you first recognize a word or more in Spanish of the conversation taking place between Mr. Blanco and Mr. Fiffe?

A As long as it took me to ask Mr. Blanco a question.

Q Is it your testimony then that you did not understand any word or more of Spanish prior to the time that you say that you asked Mr. Blanco a question?

A On that date, that is correct.

Q Now, when you asked Mr. Blanco a question, do you recall the question that you asked him?

A Yes.

Q Do you recall whether it was in English or Spanish?

Q So that the entire period of November 12, 1972, is it fair to say that the only word that you heard in Spanish that you could recognize was the word "cuando"?

A That is correct.

Q Now, on any other day was there any word in Spanish that you could -- that you claim that you understood?

A Yes.

Q What other day?

A November 20th.

Q Where did that conversation take place that you now claim?

A In Mr. Blanco's apartment.

Q And what time was that?

A Approximately 5:30 in the afternoon.

Q Was anybody present besides you and Mr.Blanco at the time of this alleged conversation?

A Yes.

Q Who was present?

A Mr. Fiffe.

Q And did you have, at any time, the conversation with Mr. Blanco in Spanish?

A No, I did not.

Q Did you, at any time, converse with Mr. Fiffe

it back?

THE COURT: Mr. Shapiro, please read it back.

(Record read.)

THE WITNESS: I understood two words.

Q What are those two words?

A Cuando and cuanto.

Q That is the only -- those are the only two words that you understand that you say that you understand or recognized -- withdrawn.

And those are the only two words that you say that you recognized, which occurred between Mr. Blanco and Mr. Fiffe on November 20, 1973? Is that correct?

A That is correct.

Q Was there any other date in which you claim that in a conversation between anybody in Spanish that you understood any of the Spanish words?

A No, sir.

Q So that we may be very clear on the record, there are no other words of Spanish that you understood in all the period of time that you related on your direct examination; is that correct?

A That correct.

Q You don't actually know that Mr. Blanco was translating for Mr. Fiffe, do you?

A No.

Q You don't know what Mr. Blanco was saying to Mr. Fiffe in Spanish?

A No.

Q And you don't know what Mr. Fiffe was saying to Mr. Blanco in Spanish at any time?

A No.

Q Now, you have conducted, you said, over 50 investigations; is that correct?

A I have been a part of 50 investigations.

Q You were not in charge of any of those investigations?

A Some of them I was.

Q How many would you say that you were in charge of?

A Five.

Q Over the entire period of time?

A That's correct.

Q Were you in charge of the investigation which is at issue here before this Court?

A No.

Q Now, you have been making reports -- withdrawn.

Is it part of the practice and requirement of your department, part of your employment, to make reports

BY MR. SUTTON:

Q Mr. Abbott, do you have any degree in Chemistry?

A No sir.

Q Have you ever taken qualitative analysis in any course in your schooling?

A No.

Q Have you ever taken any quantitative analysis in any course in your schooling?

A No sir.

Q Have you taken organic chemistry?

A No sir.

Q Do you have any idea as to how many other chemicals can be described as white chrystally or white powder?

A Numerous.

Q You know that yourself, is that right?

A That is correct.

Q When you went to your employers' school in 1971 you testified that somebody in that school in the course of one of the courses presented a vial to the class, a glass enclosed material which was white. Is that your testimony?

A I believe I said they gave me a vial of cocaine for my examination.

Q Is it fair to say that you did not test whatever

observing a whole mass of white powder you can see into that mass what is cocaine and what is something else? Do you understand that question?

A Yes sir.

Q Can you respond to that question?

A I will try. I was taught the properties and the physical appearance of cocaine in my training in school, and in my experience in the field and in my conversations with agents who have been doing just that for a number of years.

Q That is the total basis upon which you claim the ability to look at a mass of white powder and say it contains cocaine or doesn't contain cocaine?

Is that correct?

A Do you want a little more?

Q Certainly.

MR. SUTTON: May I have the question read to him and ask that he be directed to answer responsively.

THE COURT: Will you read the question, Mr. Simon.

(Record read.)

THE COURT: What is the question? Do you understand the question? Is that the question?

MR. SUTTON: I want to know whether he

Q Or any of the different powders together, whatever they are?

A Yes.

Q Which powders?

A Borac acid, lactose, cocaine.

Q If you put borac acid and lactose together, is it your testimony that you could identify that it is borac acid and that it is lactose in that mixture as distinguished from bicarbonate of soda and lactose?

A No sir.

Q You couldn't?

A That is correct.

Q So that is it a fair statement then that any white powder that you mix together you couldn't distinguish what its constituents were, could you?

A No.

Q And is it a fair statement that any white granule, if you mix together different substances, you couldn't distinguish their constituents, could you?

A No.

Q A white powder is just a white powder? Isn't that so?

A I suppose, yes.

Q White granules are just a mass of white granules,

Q I asked you, did you hear anybody else aside from yourself make any promises to Mr. Miranda concerning the testimony he might give here?

A Yes.

Q Who might that be?

A Mr. Kimelman.

Q What promise was made to him if any?

MR. KIMELMAN: Objection, your Honor. Hearsay.

THE COURT: Overruled.

Promise made to whom.

THE WITNESS: Mr. Miranda.

THE COURT: I will allow it.

Q What promise was made to him?

A Mr. Miranda was advised that if he pleaded guilty to one count in a six-count indictment and he agreed to help the Government, the remaining five counts of the indictment would be dismissed and the extent of his ccoperation would be made known to the sentencing judge.

Q When was this -- when did this conversation take place? Do you recall?

A The end of September.

Q That's this year, 1974?

A That's correct.

Q All right. Was there a similar conversation

with Mr. Miranda -- with Mr. Fiffe? I am sorry.

A Yes sir.

Q And did that take place at the same time?

A Yes sir.

Q And at the same place?

A Yes sir.

Q Now, did you or Mr. Kimelman ever show Mr. Fiffe or Mr. Miranda copies of your reports?

A No sir.

Q Did you ever show them copies of the grand jury testimony in this case?

A No sir.

Q Well, did you discuss with them how they would go about testifying?

A No sir.

Q Did you hear anybody else discuss that with them?

A No sir.

Q So, in other words -- correct me if I am wrong -- you were not present at any time when these witnesses were being spoken to concerning their testimony at trial?

A No sir, that is not correct.

Q Well, was there an instance-when you were present?

Mr. Kimelman.

MR. SUTTON: May I just press this question, because.

THE COURT: No, I won't hear it. It has already been done. You have an exception to the ruling. Go ahead, Mr. Kimelman.

MR. KIMELMAN:

DIRECT EXAMINATION

BY MR. KIMELMAN:

Q Mr. Dovedko, by whom are you employed?

A The Drug Enforcement Administration.

Q How long have you been so employed?

A Approximately seven years.

Q Will you tell us in what capacity, sir?

A Presently I am an Inspector with the Agency.

Q Have you held any other titles with the Drug Enforcement Administration, or its predecessor?

A I have. Prior to becoming an Inspector, I was a Supervising Agent.

Q Were you on duty on November 8, 1973?

A I was.

Q Will you tell the Court and Jury what your duties were on that day?

A On November 8, 1973, I performed surveillance

regarding the activities of Agents Abbott and Borst.

Q Will you explain to the jury generally what are the duties of a surveilling Agent?

A A surveillance Agent follows an individual to ascertain and cooperate as to who he has met and what he has done on a certain date.

Q And to your knowledge, were there any other surveillance Agents present with you on November 8, 1973?

A To the best of my recollection, I believe on November 8th I was the only surveillance Agent there.

THE COURT: Did you take a fixed position, or were you moving?

THE WITNESS: It was a moving surveillance, your Honor.

THE COURT: Were you in a car?

THE WITNESS: Yes.

THE COURT: A Government car?

THE WITNESS: Yes.

THE COURT: Anything on the car that indicated it was a Government car?

THE WITNESS: No, sir.

THE COURT: Like any other car on the road?

THE WITNESS: Yes, sir.

Q Now, sir, were you on duty at approximately 3:10

in the afternoon of November 8, 1973?

A I was.

Q Will you tell us where you were?

A At that time I was in the vicinity of 97 Clinton Avenue, Brooklyn, New York.

Q And were you there as a surveillance Agent on that day?

A I was.

Q Can you tell the Court and Jury what you observed at approximately that time on November 8, 1973?

A At that time I was in my vehicle, and I observed Agent Abbott and an individual who was later identified as Victor Blanco exit 97 Clinton Avenue, and enter an official Government vehicle, which was a yellow Volkswagen.

(continued on next page.)

A (continuing) At that time they joined Agent Borst, who was already in the Government vehicle. After joining Agent Borst, they proceeded to drive to the vicinity of Havemeyer and South First Street in Brooklyn. All the time I followed them enroute there.

Q Were you following them in your own car?

A That is correct.

Q When they got to the vicinity of Havemeyer and South First Street, what did you observe at that time?

A At Havemeyer and South First, Agent Borst parked the vehicle, while Agent Abbott and Blanco exited the vehicle and walked on foot to a clothing store at 293 Grant Street in Brooklyn.

Q Were you still in your car at this time?

A That is correct.

Q What is the next thing you observed then?

A Agent Borst -- Excuse me -- Agent Abbott and Blanco entered the clothing store.

Q What did you do?

A I then circled the block.

Q As you circled the block, Agent Dovedko, did you notice anything, or observe anything?

A As I passed the clothing store, after going around the block, I noticed a 1965 Mercury -- It was an old greenish

colored car, that I had seen an individual previously identified, -- subsequently identified -- as Manuel Fiefe -- I had seen him drive it on a previous occasion. It was parked by the clothing store.

Q Did you also on a previous occasion say you had seen Manuel Fiefe drive that 1965 Mercury car?

A Yes. I believe that would be on the night of November 5, 1973.

Q After you went around the block, what happened then.

A I took up a position of stationary surveillance, meaning I just parked the car and watched the store.

At approximately 4:15, Agent Abbott and Blanco exited the store, rejoined Agent Borst in the Government vehicle, and proceeded back to 97 Clinton Avenue, where Blanco exited the vehicle and returned to his residence. Subsequent to that the two undercover Agents met with me and advised me.

Q Did you have a conversation with them about what had occurred in the clothing store?

A Yes, that is right.

MR. SUTTON: Objection.

THE COURT: Excuse me?

May I have the question and answer, Mr. Simon?

(Record read.)

THE COURT: I will allow it. I won't allow the conversation.

MR. KIMELMAN: No, I have no intention.

Q Now, Mr. Dovedko, were you also on surveillance on November 12, 1973?

A I was.

Q Were any other Special Agents with you on that date?

A There were.

Q If you recall, what other Agents were with you on November 12, 1973?

A To the best of my recollection, it would Group Supervisor Anthony Seneca, Special Agent Nicholas Alleva, Douglas Driver, and there may have been one or two more. Those stick in my mind.

Q Special Agent Dovedko, I show you what has been marked --

THE COURT: Objection sustained.

MR. KIMELMAN: Your Honor, may I have a side bar?

THE COURT: The jury may be excused.

(The jury thereupon retired from the courtroom.)

(The following occurred in the absence of the jury.)

THE COURT: You know there are times when defen-

Don't ask the Agent whether he made the report, and whether this is the report, and whether it was the regular custom and practice to make the report.

MR. KIMELMAN: I should ask that, your Honor?

THE COURT: No, I forbid it.

MR. KIMELMAN: I didn't intend to.

THE COURT: It is a document.

(The jury thereupon returned to the courtroom.)

A L E X A N D E R D O V E D K O , called as a witness, having previously been duly Sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. KIMELMAN: (continued)

Q Special Agent Dovedko, I show you what has been marked as 3500-14, and I ask you if that refreshes your recollection as to who was present with you on November 12, 1973?

(Witness examines document.)

A Yes, it does.

Q Will you tell us now who was with you on November 12, 1973?

A Special Agent Driver, Special Agent Chellino, and Special Agent Beacheal.

Q Now, had you established a surveillance at approximately 2:45 in the afternoon on November 12th?

A Yes, I did.

Q Will you tell us where you were?

A The vicinity of 97 Clinton.

Q Did you observe anything at that time?

A Yes, at approximately 3:00 P.M., I observed Agents Abbott and Borst in the official Government official, the Volkswagen.

Q Will you tell us where you observed them?

A They were driving off 97 Clinton, and across the street would be underneath the Brooklyn-Queens Expressway, I believe that is Park Avenue, and Blanco was also in the car with them.

Q Now, did you follow them?

A Yes, I did.

Q Now, were you in your own vehicle?

A I was.

Q Where did you follow them to?

A I followed them to the vicinity of Grant and Havemeyer in Brooklyn.

Q When you got to that vicinity, what did you observe?

A Again Agent Borst parked the vehicle, and Agent Abbott and Blanco exited the vehicle.

Q What is the next thing that you observed?

Both Agent Abbott and Blanco walked to and entered the clothing store at 293 Grant Street.

Q Did you observe anything after that?

A Yes. After they entered the clothing store, I again maintained a fixed surveillance at the premises.

At approximately 3:20 P.M., Agent Abbott exited the clothing store, and returned to the Government vehicle, and with Agent Borst, departed the area.

At this time, I followed Agent Abbott out of the area and met with him with other surveillance Agents.

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(continued on next page.)

DIRECT EXAMINATION

BY MR. KIMELMAN: (Cont.)

Q Did you have a conversation with Agent Abbott and the other surveilling agent?

A Yes, I did.

Q As a result of that conversation, did you give anyone instructions?

A No, I did not.

Q What is the next thing you observed?

A After the conversation with the surveilling agents and the undercover agents, I returned to the vicinity of the local clothing store, 293 Grant.

Q After you returned to the vicinity of the clothing store, did you observe anything happen?

A Yes, I did. At approximately 3:30 p.m., I observed Agent Abbott and Borst return and park the Government vehicle in the vicinity of the clothing store.

Q After that, what is the next thing that you observed?

A At approximately 3:45 p.m., I exited my vehicle and walked to -- within sight of Agent Abbott and Agent Borst in their vehicle. And I motioned for Agent Abbott to get out of his vehicle and go to the clothing store to see what was happening.

I then proceeded to walk around the block, returning to my vehicle.

Q Did you observe Agent Abbott return to the clothing store?

A No, I did not. When I returned to my vehicle, Agent Abbott was no longer in the surveillance vehicle. Just Agent Borst was there.

Q What is the next thing that you observed that happened?

A Approximately 3:55 p.m., I observed Agent Abbott and Blanco exit a luncheonette which was situated in the corner of Havemeyer and Grant.

Q Could you see where they went?

A Yes, I could.

Q Where did they go?

A Agent Abbott returned to the Government vehicle and Blanco returned to the clothing store.

Q What is the next thing that you observed?

A Approximately 4 p.m., Agent Abbott and Borst departed the area and again met with surveillance agents. I remained at that location of the clothing store.

Q Now, shortly thereafter did you observe anyone enter the clothing store?

A Yes, I did.

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Q Will you tell us what you observed?

A A Approximately 4:05 p.m. I observed a male Latin, mustache, wearing a -- I can describe it as a three-quarter length tan coat, enter the clothing store.

Q Have you subsequently identified the individual who entered the store at that time?

A I have.

Q Would you tell us the name of that individual?

A Luis Miranda.

Q What is the next thing you observed after you saw Mr. Miranda enter the clothing store?

A Well, after Mr. Miranda entered the clothing store, I circled the block and moved my vehicle in an attempt to see who was in the clothing store. I was unsuccessful at this time as a truck was blocking my view. I returned to my surveillance location which was on Grant, and approximately 4:15 p.m. I observed Agent Borst and Abbott return and park the Government vehicle in the vicinity of the clothing store.

Q What is the next thing that you observed?

A At approximately 4:30 p.m., I observed Blanco exit the luncheonette that I initially had seen him come out of with Agent Abbott and walk to and enter the clothing store. At this --

Q I'm sorry.

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A At this point I moved my vehicle and other surveillance agents continued the surveillance.

Q These are the surveilling agents that you mentioned before?

A That's correct.

Q Now, a short time thereafter, did you observe anyone exit the clothing store?

A That's correct.

Q Approximately what time, if you recall?

A Approximately 3:35 I returned to within sight of the clothing store, and I'd say approximately 4:40 I observed the male Latin that I initially saw go in at 4:05, Miranda, exit with another male Latin.

Q Do you see that other male Latin in this Courtroom today?

A Yes, I do.

Q Will you point him out, please?

A The gentleman with the red sport jacket.

THE COURT: Let the record show the witness pointed out the defendant Israel Diaz-Martinez.

MR. SUTTON: He is not wearing a red sport shirt.

MR. MATARAZZO: Red sport jacket.

MR. SUTTON: I am sorry.

THE WITNESS: It's a jacket.

MR. SUTTON: My apology.

THE COURT: No, I -- Mr. Mahler represents that defendant, doesn't he.

MR. SUTTON: Yes, your Honor.

BY MR. KIMELMAN:

Q Sir, at approximately 4:40 p.m., you saw Luis Felipe Miranda and Israel Diaz-Martinez leave the clothing store; is that correct?

A That's correct.

Q Where did you observe them go?

A Both individuals entered a light blue Pontiac and departed the area.

Q Was any surveillance maintained of these individuals as they left the area?

A It was.

Q Was it maintained by yourself?

A Yes, it was.

Q Where did you follow them to?

A They drove to the vicinity of an auto body shop on Middletown Street in Brooklyn. I believe it's Capital Auto Body. They exited the car and had a conversation and spoke with several individuals in the auto body shop.

Q Special Agent Devotko, I draw your attention to

November 20th, 1973. Were you on a similar surveillance assignment on that date?

A Yes, I was.

Q Do you recall what other agents were with you on that date?

A On the 20th, there were two premises under surveillance initially when we first began in the afternoon, myself and Agent William Mallarney (phonetic) were on surveillance in the vicinity of the clothing -- the clothing store at Grant Street, and Group Supervisor Seneca, Special Agent Oliva -- I believe the driver was there. We were at 97 Clinton.

Q Now, I draw your attention to approximately 6 p.m. on November 20th, 1973. Were you on the surveillance assignment at this time?

A Yes sir, I was.

Q Will you tell us where you were?

A At approximately 6 p.m. I was in the vicinity of 97 Clinton.

Q Did you observe anything at that time?

A Yes, I did. At approximately 6:10 p.m. I observed Agent Abbott and Borst drive up in the Volkswagen, the Government vehicle, park, and Agent Abbott entered 97 Clinton.

Q Did you see anyone exit 97 Clinton a short time thereafter?

A Yes. At approximately 6:30 p.m. Agent Abbott, Blanco -- VictorBlanco and an individual identified -- subsequently identified as Manual Fiffe, exited 97 Clinton.

Q Where did they go?

A Agent Abbott and Blanco joined Agent Borst in the Volkswagen, and Manual Fiffe entered the Mercury that I had previously seen him drive on several occasions.

Q You observed this yourself?

A That's correct.

Q After they entered the two cars, the Government car and the Mercury, did you maintain your surveillance?

A Yes, I did.

Q Where did the two cars go?

A Both vehicles proceeded to drive from 97 Clinton via Myrtle Avenue, which is an intersection to the vicinity of Knickerbocker and Gates Avenue in Brooklyn. The Mercury was leading and the Volkswagen was following.

Q You testified Manual Fiffe was in the Mercury?

A That's correct.

Q And Blanco and Abbott and Borst were in the yellow Volkswagen?

A That's correct.

Q Now, do you know of any other surveillance agents who were also following these two cars?

A There were several agents. We had approximately two or three other cars with us.

Q Now, when you observed the two cars arrive in the vicinity of Gates and Knickerbocker, what happened next?

A I observed Fiffe park his vehicle on Gates, and Agent Abbott and Borst and Blanco in their vehicle proceeded a little past them where they parked their vehicle. At this point I continued on around the block and other surveillance agents picked up the surveillance.

Q What is the next thing that you observed?

A At approximately 8:30, I was parked on Gates Avenue and I exited my vehicle and walked on foot. As I walked on foot I passed a store, a record shop which I had previously seen Abbott go into on one occasion while I was on surveillance there. And as I walked past the record shop I saw two male Latins exit the record shop.

Q Had you seen Agent Abbott and the others enter the record shop earlier?

A At one point during the surveillance I passed the record shop and I saw Agent Abbott and Borst enter it. This would be between 6:30 and 8:30 p.m..

Q And do you recall the name of that record shop?

A Yes. It was Estrella Record Shop.

Q Do you recall the address?

A I believe it's 1428 Gates.

Q Now, you said you were on surveillance at 8:30 p.m.?

A Yes.

Q In the vicinity of that record shop; is that correct?

A Yes.

Q And you observed one or more individuals exit that record shop?

A That's correct.

Q How many individuals did you observe?

A There were two male Latins.

Q Could you observe what they were doing?

A Both subjects were carrying various things. One of the subjects was carrying clothing on a hangar and the other one was carrying several boxes.

Q Where did they go?

A Immediately exiting the record shop there was a maroon Ford parked almost in front of it and they proceeded into the Ford.

Q Now, do you recognize either of those individuals as being present in the Courtroom today?

A Yes, I do.

Q Would you point that individual out?

A The male with the blue sport jacket, mustache, dark skin.

THE COURT: Will you please stand, Mr. Vivas. Is that the gentleman you pointed out.

THE WITNESS: Yes sir.

THE COURT: Let the record show the witness pointed out the defendant Jorge Vivas.

Q Is that the individual -- one of the individuals you saw exiting the Estrella Record Shop at 8:30 p.m. on the night of November 20th?

A Yes, I did.

Q Now, Inspector Devotko, I draw your attention to November 26th, 1973. Were you on a similar surveillance assignment?

A Yes, I was.

Q Approximately 3 o'clock in that afternoon, will you tell us where you were?

A On November 26th, at that time I was in the vicinity of 97 Clinton.

Q Did you observe anything at approximately that time on November 26th, 1973?

A I believe it was 3:30. I am not sure about the

time.

Q Do you remember what you observed?

A Agent Abbott and Borst drove up in their Government vehicle, the Volkswagen, parked the vehicle, and Agent Abbott entered 97 Clinton.

Q Did you see Agent Abbott leave 97 Clinton a short time thereafter?

A That's correct, I did. At 3:50 p.m. Agent Abbott exited 97 Clinton then rejoined Agent Borst in the Government vehicle.

Q Did anyone exit that address ashorttime later?

A Approximately 3:55 Victor Blanco exited 97 Clinton and joined the two undercover agents in the Volkswagen.

Q In other words, 5 minutes after Agent Abbott came out, Victor Blanco came out?

A That's correct.

Q Did you observe what they did after they exited 97 Clinton?

A Once Blanco was in the car, the undercover agents and Blanco proceeded to the clothing store at 293 Grant Street.

Q Did you follow them there?

A Yes, I did.

Q While you were in the vicinity of the clothing store at 293 Grant Street, did you recognize any vehicles parked in that area? Do you recall?

A I believe the Mercury might have been there on that date.

MR. KIMELMAN: Your Honor, if I may.

Q I show you what has been marked as exhibit 3500-16.

MR. MAHLER: I object to this. Leading the witness.

THE COURT: Overruled. I will allow it.

Q And I ask you if you can refresh your recollection?

MR. MAHLER: Excuse me. Could you tell me the exhibit.

MR. KIMELMAN: 16.

THE WITNESS: The Mercury was there on that date.

THE COURT: Does that refresh your recollection that it was.

THE WITNESS: Yes, it does.

Q Had you ever seen that Mercury before?

A On several occasions.

Q Is that the same Mercury you testified to before as your having seen Manual Piffe drive on several

occasions?

A That's correct.

Q Did you see Special Agent Abbott enter the clothing store?

A Blanco and Abbott entered the clothing store.

Q Did there come a time when they exited the clothing store?

A Approximately 4:15 Agent Abbott I believe by himself exited the clothing store.

Q Did you shortly thereafter meet with Special Agent Abbott?

A That's correct. Agent Abbott joined Agent Borst in the Government vehicle, drove out of the area and I met with the two undercover agents.

Q Did you have a conversation with them about what had transpired?

A We did.

Q Inspector Devotko, I draw your attention to November 29th, 1973. Were you on surveillance duty on that day?

A I was.

Q Approximately at 1:45 p.m., will you tell us where you were located?

A On November 29th, at that time I was in the

vicinity of 97 Clinton.

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Q Did you observe anything?

A Yes, sir. At approximately 1:15 P.M., I observed Agent Abbott drive up in the Volkswagen, the undercover vehicle, park the vehicle, and Agent Abbott exited the vehicle, and entered 97 Clinton, while Agent Borst remained in the vehicle.

Q Did there come a time when Special Agent Abbott exited 97 Clinton?

A That's correct. At approximately 2:00 P.M. Agent Abbott exited 97 Clinton, entered the Government vehicle, proceeded out of the area, at which time he again met with me and advised me of what had transpired.

MR. KIMELMAN: No further questions.

THE COURT: Mr. Sutton.

MR. SUTTON: I have no questions, your Honor.

THE COURT: Mr. Matarazzo?

MR. MATARAZZO: Yes, your Honor.

CROSS EXAMINATION

BY MR. MATARAZZO:

Q Mr. Dovedko, in your duties as an Agent for the Government, you were engaged in surveillance on October 31st of 1973?

A I believe I was.

Q On that day, did you see Victor Blanco, also known as Red?

ing out of the store, the Estrella Record Shop; is that right?

A That's correct.

Q And Mr. Vivas was one of the men you saw coming out?

A That's correct.

MR. MATARAZZO: No further questions.

THE COURT: Mr. Mahler?

MR. MAHLER: No questions.

THE COURT: Anything further?

MR. KIMELMAN: No, your Honor.

THE COURT: All right, you may step down.

(Witness excused.)

THE COURT: All right, your next witness.

MR. KIMELMAN: The Government calls Nicholas Alleva.

THE COURT: Is he here?

MR. KIMELMAN: Yes, sir. I think he is out in the hall.

N I C H O L A S A L L E V A , called as a witness, being duly Sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. KIMELMAN:

Q Sir, by whom are you employed?

A The United States Department of Justice, Drug

Enforcement Administration.

Q In what capacity?

A Special Agent.

Q How long have you been so employed?

A Approximately four years.

Q Now, sir, I draw your attention to the 5th of November, 1973. Were you on surveillance on that date?

A Yes, sir, I was.

Q Will you tell us where you were on surveillance?

A Yes. I was on surveillance in the vicinity of Clinton Avenue and Myrtle Avenue in Brooklyn, New York.

Q Now, at approximately 5:00 o'clock in the afternoon, did you observe anything while on surveillance?

A Yes, I did. I observed Special Agent Barry Abbott in the vicinity of Clinton Avenue.

Q Were other Special Agents with you at that time?

A Yes, there was.

Q Will you tell us who they were?

A Special Agent --

Q If you recall.

A I don't recall all the Agents that were there. No, sir.

Q After you saw Special Agent Abbott, did you observe anything else?

A Yes, sir.

Q Will you tell us what that was?

A At about ten to 6:00, I observed -- I saw a 1965 Marcury in the vicinity of Clinton Avenue and Myrtle Avenue. I followed that car to the area of Roebling Street and Grant Street in Brooklyn.

Q Now, do you know who was driving that car?

A Not of my own personal knowledge, no, sir.

Q Do you know now as a result of the investigation who that individual was?

A Yes, I do.

Q Will you identify that individual for us?

A Yes, sir. His name is Fiefe.

Q When it got to the vicinity of Roebling and Grant, what did you observe?

A I saw the individual get out of his car and walk to a clothing store. I believe it's 293 Grant Street, or the 293 Clothing Store.

MR. SUTTON: May I make a suggestion, your Honor, at the side bar?

THE COURT: The jury may be excused.

(Whereupon, the jury retired from the courtroom.)

MR. SUTTON: Your Honor, it would appear that his testimony is going to be cumulative to Mr. Dovedko, if

I understand that.

Would that be a fair --

MR. KIMELMAN: No, sir.

MR. SUTTON: Because I was ready to, you know, stipulate to it.

THE COURT: All right.

MR. SUTTON: Let it go.

THE COURT: All right, seat the jury.

(Whereupon, the jury entered the courtroom.)

THE COURT: All right, you may proceed, Mr. Kimelman.

MR. KIMELMAN: Thank you, your Honor.

Q Special Agent Alleva, we were at November 5, 1973, and you saw Manuel Fiefe enter the clothing store at approximately 6:00 P.M.; is that correct?

A That's correct.

Q Will you tell us where you were when you made this observation?

A I was in front of the store, looking through the window of the store.

Q Were you in your car, or on the sidewalk?

A No, I was out of the car, and I was standing in front of the window.

Q Could you see inside the clothing store?

A Yes, sir, I could.

Q What did you observe inside the clothing store?

A Inside the clothing store there were two individuals, two male individuals. Fiefe approached the two male individuals, one individual being about five, nine, and the other being about six foot. He approached the taller of the two individuals, went to the back room. It was a doorway at the back of the store. Went to the doorway in the back of the store, remained approximately a minute.

Q Now, you say he went with the taller of the individuals to the back of the store?

A Yes.

Q And douyou recognize the individual who Manuel Fiefe was with in the courtroom today?

A Yes, sir, I do.

Q Will you point him out, please?

A Yes, sir. The second man, wearing the red jacket. The second man to my right at that table.

THE COURT: Let the record show the witness pointed out the defendant Israel Diaz-Martinez.

Q After Mr. Fiefe and Mr. Diaz-Martinez went to the back room, what was the next thing that happened that you observed?

A They remained there about a minute. They came

out of the room, went back to the third individual who was standing there, who was subsequently identified as Miranda.

Q What happened when they were together?

A Fiefe and Miranda were in conversation. Fiefe handed Miranda something, and Miranda placed it in his pocket. At this point, the three individuals turned to the window that I was looking in, and I left the area.

Q Special Agent Alleva, I draw your attention now to November 20, 1973. Were you on a similar surveillance assignment?

A Yes, sir, I was.

Q Approximately 4:00 o'clock on that date, would you tell us where you were located?

A I was again in the vicinity of Clinton Avenue and Myrtle Avenue in Brooklyn.

Q Did you observe anything on that occasion?

A Yes, sir, at approximately 4:00 P.M. on that day I observed Special Agent Barry Abbott enter 97 Clinton Avenue.

Q Did he subsequently exit?

A Yes, he did. At approximately 4:30.

Q Did you observe him in the company of anyone else when he exited 97 Clinton Avenue?

A Not when he exited, no, sir.

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Q What did you next observe?

A The next thing I observed was at approximately 5 P.M. on that same date I saw Special Agent Barry Abbott again enter 97 Clinton Avenue.

Q Did he, a short time later, exit that address, to your knowledge?

A At approximately 5 -- quarter to 6 he exited 97 Clinton Avenue.

Q What is the next thing that you observed?

A Inbetween 5 P.M. and 5:45 P.M. -- at about 5:15 I observed Fiffe enter 97 Clinton Avenue.

Q That's Manuel Fiffe?

A Yes.

Then at about 10 after 6 I observed Special Agent Barry Abbott again enter 97 Clinton Avenue.

Q What's the next thing that yOU remember?

A At about 6:30 I began following two cars, one the lead -- the car in the front was a 1965 Mercury and the second car was a Government car, a Volkswagen.

Q Were you able to see who was in the two vehicles?

A No, I was not able to see in the vehicles. I could just determine that there was one individual in the first car and three individuals in the second car.

Q Will you tell us where you followed those cars to?

A Followed to the vicinity of Gates Avenue and Knickerbocker Avenue, in the Bushwick Section of Brooklyn.

Q What did you observe when the car reached that vicinity?

A I parked my car in front of -- directly in front and across the street from a record shop.

Q Do you recall the name?

A Estrella record shop.

Q Do you know -- recall the location?

A I believe it's 1428 Gates Avenue.

Q After you parked your car across the street from the record shop, what did you observe?

A I observed special agent Barry Abbott meet with Victor Blanco and Fiffe and enter into the record shop, at which time I left the area.

MR. KIMELMAN: I have no further questions, your Honor.

THE COURT: Mr. Sutton.

CROSS EXAMINATION

BY MR. SUTTON:

Q You do not have any notes to give you the time factors that you have testified to, do you?

type of an investigation, that you would not want your identity to be known? Would that be correct?

A I don't understand what you mean "in this type of investigation."

Q When you were working on the streets, would you want anybody to know you to be an agent?

A Absolutely not, sir.

Q In fact, would I be correct in stating that it might not only jeopardize yourself, but maybe another agent?

MR. SUTTON: Objection, your Honor.

THE COURT: I will allow it. Overruled.

Q Is that right?

A It is possible, yes.

Q And you usually try to work as undercover as possible, don't you?

A According to the situation, yes.

Q And are you telling this court that you stood in front of the entrance to this store and looked straight into the store?

A No, sir, I am not telling --

Q What is your testimony here?

A May I finish the answer?

Q Certainly.

A I am not telling the Court that I stood in

front of the window and looked into the store.

I am telling the Court that I stood in front of a display -- a window display looking through the display into the store.

Q This is a clothing store, isn't it?

A Yes, it is.

Q There are displays of clothing in the windows?

A Yes.

Q And is it your testimony that you saw what you say you saw through the display?

A Yes, sir.

Q Was your face pressed to the glass?

A No, sir, it was not pressed to the glass.

Q How near the window were you standing?

A How close to a window does one stand when they are looking at merchandise, 6 inches, a foot.

Q It is your testimony --

A I have no idea.

Q What is your testimony?

A I have no idea, sir.

Q This entire store, would you agree with me, is not more than 50 feet wide; is that correct?

A I would say between 15 and 20 feet wide.

Q And you were -- there is a door that separates it in the middle?

A Yes.

Q It would be 7 and a half feet on each side of the door -- the window on each side?

A If I am correct, the left hand facing the store was slightly wider than the right hand window.

Q Is it your testimony today that you looked through the display in that window and you could see all the way into the store?

A If I might add, I am not telling you that I did look through the entire display. The display was only about 4 or 5 feet high.

Q Is it your testimony that you could see people go into the back of the store?

A Absolutely, yes.

MR. MAHLER: I have no further questions.

THE COURT: Anything further?

MR. KIMELMAN: Nothing further.

THE COURT: You may step down.

Next witness.

MR. KIMELMAN: May we have a side bar?

THE COURT: Are you going to ask that we suspend for the day?

store, and in the basement of the clothing store; that Special Agent Dovedko himself on at least every occasion that he has testified to before your Honor already had observed the clothing store, and saw that there was a separate entrance for the apartments upstairs. And I had taken a photograph of this --

THE COURT: All right, have him testify. I understand there is no stipulation?

MR. MAHLER: No. I think it is going to go too far, Judge, I am sorry.

THE COURT: Well, go ahead, put him on the stand.

A L E X A N D E R D O V E D K O , called as a witness, having previously been duly Sworn, resumed the stand and testified further as follows:

THE COURT: You have been Sworn, and you understand you are still under Oath?

THE WITNESS: Yes, sir.

DIRECT EXAMINATION

BY MR. KIMELMAN:

Q Now, Inspector Dovedko, you are the Agent in Charge of an investigation involving Israel Diaz-Martinez and others?

A Yes, I was.

Q As part of your duties as Agent in Charge, and as a surveillance Agent, did you have occasion to visit the premises

at 293 Grant Street in Brooklyn?

A I did.

Q Could you tell the Court on how many occasions you visited, and on what dates, 293 Grant Street in Brooklyn?

A With regard to surveillance, November 5, 8, 12, 20, 26, and in between those dates there are probably several dates.

Q And are you familiar with the investigation that was being conducted as to activities occurring inside the clothing store located at 293 Grant Street in Brooklyn?

A I was.

Q Will you tell us who informed you of what went on inside the clothing store pertaining to this investigation?

A Special Agent Abbott.

Q Did he describe to you the purchase of cocaine --

MR. MAHLER: I object to this as leaving to a degree that is unfair in this proceeding?

THE COURT: What's the objection?

(Record read.)

MR. MAHLER: In this type of proceeding.

THE COURT: Overruled. I will allow it.

Q Did Special Agent Abbott describe cocaine purchases he had made inside 293 Grant Street in the clothing store?

A Yes.

Q Did he tell you where these purchases occurred?

A Yes, he did.

Q Can you tell us now where these purchases occurred?

A One sample, I believe, he received in the clothing store proper, that would be on the street level, and an eighth of a kilo he received in the basement of the clothing store.

Q Was any surveillance or any investigation taken of the apartments that were above the clothing store at 293 Grant Street?

A By myself, no.

Q To your knowledge?

A To my knowledge, no.

Q Do you know personally, or as a result of your investigation in this case, of any of the individuals who lived in those apartments above the clothing store?

A From information available to me personally, I have no knowledge of any of them living there.

MR. KIMELMAN: Will you mark this for identification?

THE CLERK: Photograph marked Exhibit 7 for identification on the hearing.

(Photograph referred to was received and marked Government's Exhibit number 7 for identification on the hearing.)

Q I show you what has been marked Government's Exhibit

7 for identification, and I ask you whether it is a fair representation of the premises at 293 Grant Street, Brooklyn?

MR. MAHLER: I object to the question. I believe the question should be, at the time in question.

THE COURT: What is the question?

(Record read.)

THE COURT: Well, add onto that, as of about March 26, 1974.

Is that the way the store looked to you, and the building?

THE WITNESS: I would say the building looks the same. The awning -- I believe at that time there was a display in the window of clothing.

THE COURT: The physical structure, the same?

THE WITNESS: Yes, it is.

THE COURT: Any other objection?

MR. MAHLER: No, your Honor.

THE COURT: It may be marked.

THE CLERK: So marked in evidence, Government's Exhibit 7 for identification, now 7 in evidence on the hearing.

(Document referred to, being a photograph, having previously been marked Government's Exhibit 7 for identification, was now received and marked Government's Exhibit 7 in evidence on the hearing.)

THE COURT: Why don't you show the whole building, since you are showing the building?

MR. KIMELMAN: I am sorry, your Honor, somebody took the picture this morning, and it was just rushed to me.

THE COURT: I assume there is another story above the story shown on the picture?

THE WITNESS: I believe so.

THE COURT: Do you mean there is just one story above the clothing store?

MR. KIMELMAN: May he see the picture again, your Honor, so he can --

(Mr. Kimelman hands picture to witness.)

Q Does that picture represent the entire building at 293 Grant Street to the best of your recollection?

A I really can't answer that question. I don't remember.

Q Now, do you recall what the front of the clothing store looked like at 293 Grant Street at the time in question, March of 1974?

A Yes, I do.

Q Do you recall that there was another doorway that is part of the same building, but not part of the clothing store?

A Yes, there is.

Q Now, do you know whether that doorway was part of the clothing store?

THE COURT: Do you understand the question?

THE WITNESS: Yes. By my own investigative activities, I would say, No.

Q Do you know of anyone else to your knowledge connected with the investigation?

A The best way I could define that, from my examination of the premises inside the clothing store, there was no access to that door, so I can make the assumption it was not connected to the clothing store.

THE COURT: Were you inside the clothing store?

THE WITNESS: Yes, I was.

MR. MAHLER: I would object to it, your Honor.

THE COURT: When were you inside the clothing store?

THE WITNESS: The date the warrant was executed.

THE COURT: And you saw no entrance from the clothing store into the space from which the outside door would lead?

THE WITNESS: That is correct.

THE COURT: Overruled. I will allow it.

Q Now, Inspector Dovedko, as the Agent in Charge of the investigation leading to this trial, are you familiar

with all the reports filed in connection with this trial, or in connection with this investigation?

A My specific aspect, yes. There were several other aspects, however.

Q The reports that you are familiar with, are you aware of any mention of criminal activity in the apartments above the clothing store?

A As far as my investigation goes, no, and one other investigation I know of, no.

Q Inspector Dovedko --

THE COURT: Do you know of anyone who was living upstairs at the time?

THE WITNESS: I assume so. But by my own activities I would have to say, no.

THE COURT: You don't know one way or the other?

THE WITNESS: I personally do not.

Q Now, Inspector Dovedko, are you familiar with the Affidavit that was prepared in connection with the search warrant executed on March 27, 1974, at 293 Grant?

A Certain aspects of it, yes.

Q Have you actually read that Affidavit?

A No, I haven't.

Q Will you tell us which aspects of it that you are familiar with, or what you mean by that statement?

A That Affidavit -- To qualify it -- That Affidavit was prepared based upon information from a different office. And I knew the basis for the attempt for the search warrant, the basis for the information being a Confidential Informant, who provided certain information regarding the premises.

Q Do you know who that informant provided the information to?

A Yes.

Q Do you know the Agents he provided the information to?

A Yes.

Q Will you tell us the names of those Agents?

A It would be Agent Campbell of the Newark District Office.

Q Are you familiar with any other Agents?

A My own personal knowledge would be Campbell, because I only had contact with Campbell.

Q Did you then give any information to Special Agent Campbell regarding the clothing store, the premises at 293 Grant Street?

A Yes, I did.

Q Will you tell us what you told Special Agent Campbell?

A I advised Agent Campbell of the buys, the purchases

of cocaine that my investigation had resulted in at that address.

Q Did you tell Special Agent Campbell where these buys occurred?

A Yes.

Q What did you tell Special Agent Campbell relative to that?

A I advised that one buy had taken place in the store proper, and one buy had taken place in the basement of the store.

Q Did you at any time inform Special Agent Campbell of any illegal activity in the apartments above the clothing store?

A No, I did not.

Q Was any mention made of the apartments above the clothing store?

A The apartments never came into the investigation at all.

Q Did you provide Special Agent Campbell with a description of the premises located at 293 Grant Street?

A No, I did not. I believe he obtained that himself.

Q Do you know for a fact if Special Agent Campbell ever visited these premises himself? Of your own knowledge?

THE COURT: Are you talking about prior to the execution of the warrant?

MR. KIMELMAN: I am sorry.

Q (continuing) Prior to the execution of the warrant?

A It would be an assumption that he had to to get a description of the building, but of personal knowledge, I would say, No.

Q Now, were you present when the warrant was executed on March 27, 1974?

A Yes, I was.

Q Do you recall what other Agents were present?

A Myself, Agent Campbell, and I believe Agent Magno. Those were the only two that I could identify by name.

Q If I showed you a report, would it refresh your recollection, or you don't know their names?

A I don't know their names.

Q Were you shown a copy of the warrant?

A Yes, I was.

(continued on next page.)

(The following continued to be heard in the absence of the jury.)

MR. KIMELMAN: May I have this marked?

THE CLERK: Document marked Government's Exhibit 8, for identification in this hearing.

(Document referred to was received and marked Government's Exhibit 8 for identification on the hearing.)

MR. MAHLER: There is some extraneous writing on it.

MR. KIMELMAN: I won't show him that. I am just going to show him the face.

Q I show you what has been marked as Government's Exhibit 8, and ask you if that is a copy of the warrant that was executed on March 27, 1974?

A I believe this would be a copy of the warrant executed on that date.

Q Now, is there a premises known on that warrant -- Is the object of that warrant on the warrant? Do you understand the question?

A Yes. From my investigative experience --

Q Just answer the question. Is there an object of that warrant?

A Is there a location?

Q Yes.

A Yes, sir.

Q Can you tell us what the caption on that warrant is?

A Premises known as 293 Clothing Corp., 293 Grant Street, Brooklyn, New York.

THE COURT: Do you believe that Agent Campbell must have visited the premises before the execution because of the detailed description he gives of the inside of the premises?

THE WITNESS: No, I am saying that from what I know of the warrant, you have to give a description of the premises.

THE COURT: It is obvious from the Affidavit that he got his description from either Special Agent Abbott or the Informant.

THE WITNESS: I never saw the affidavit, your Honor.

THE COURT: It says so right in the Affidavit.

MR. KIMELMAN: If I may, your Honor, the next witness can tell us whether Special Agent Campbell did or didn't.

THE COURT: If he did, I don't know why He didntt put it in the Affidavit.

Q You say the caption is 293 Clothing Corp., and

293 Grant Street?

A Yes, that is correct.

Q On the date that you executed the warrant, March 27, 1974, what did you take that caption to mean? What were the premises that you intended to search?

A The store proper and its basement.

Q Anything else?

A No, sir.

MR. KIMELMAN: I have no further questions.

CROSS EXAMINATION

BY MR. MAHLER:

MR. MAHLER: May I offer this, Judge, as Defense Exhibit 1?

THE COURT: Has it been offered?

MR. MAHLER: No, I have one that shows a more complete picture. It is a bad picture of the bottom, but it shows the top. You have to take pictures there at a certain time of the day, otherwise, it is too shaded to take a picture.

THE COURT: Any objection?

MR. KIMELMAN: No, sir.

THE CLERK: Photograph marked Dias-Martinez Exhibit B in evidence on the hearing.

*** (Article referred to being a photograph, was

received and marked Defendant Dias-Martinez Exhibit B in evidence on the hearing.)

Q Officer Dovedko, in actuality as of March, 1974, you really don't know all of the details of the investigation concerning the premises 293 Grant Street, Brooklyn, do you? Did you, I should say.

A Will you clarify that? Which aspect?

THE COURT: Concerning the activities of the defendants here at those premises?

THE WITNESS: As far as my investigation went, and the Newark investigation, my knowledge was specific to the clothing store and the basement.

THE COURT: That is what we are talking about.

THE WITNESS: That is correct.

THE COURT: Did you know what was going on during the ongoing investigation?

THE WITNESS: Yes, I did.

THE COURT: Of those premises?

THE WITNESS: Yes, sir.

Q Did you know the score of Campbell's investigation of March, 1974, of your own knowledge?

A I would say I knew aspects, but not the total investigation.

Q This is Defendant's Exhibit B. Does that represent

the same premises you described in the Government Exhibit just shown to you?

A I would be the same building.

Q Now, look at that. Would you agree that there are two stories above the store?

A I would agree, possibly two, possibly more. Now I am deficient on this in that all of the times that I have been there --

Q Does the picture I have shown you encompass at least two stories above the store?

A Yes.

Q There are six windows?

A Yes.

Q Three on each floor?

A Yes.

Q It is your testimony here, is it, that you saw these premises prior to the date that you executed the warrant, is that right?

A That is correct.

Q And I take it, you correct me if I am wrong, that you knew prior to the date that you executed the warrant that there were apartments, or two stories at least, above the store, is that correct?

A I would say I knew apartments. Now, how many

floors, honestly, I couldn't tell you how many.

Q Is it your testimony that you knew specifically that the target of your investigation, at least as far as you were concerned, was the store and the basement?

A That is correct.

THE COURT: I don't know whether the case has anything to do with warrants, and I don't know why it shouldn't, but if you recall the language of Mr. Justice Goldberg in United States against Ventresca, where he says Affidavits, and he was referring specifically to Affidavits, you can give them a reasonable interpretation in the light of all the circumstances. Searches should not be declared invalid simply because of some technical error.

I say I don't know whether it carries over to warrants, but frankly, I don't know why it shouldn't. I think that is what is being infused into some of the cases we have had to look at, that the warrants might be at the wrong address, but were otherwise sufficiently described so that they knew what was meant, and the search was upheld.

MR. MAHLER: May I respond to that? That may be true. But in all the cases that I have read from Ventresca forward, and even some older than that, that

that is very true, that there has to be a degree of practicality. But in each and every one of those cases where is a multi-story building, with separate apartments and separate entranceways, there must be some delineation of what is entitled to be searched. In each of those cases the Court found that there was. And here is a building that is at least two stories which is above the store, and the basement --

JB fls

(continued on next page.)

THE COURT: Well, the testimony in the trial said two stories. There were two apartments above the store.

MR. MAHLER: Now, if they knew that, there's no limiting description. All it says is 293 Grand Street, Brooklyn, New York.

MR. KIMELMAN: That's not correct. It says the 293 Clothing Corporation.

THE COURT: I dont know how significant that is. I said yesterday that that's the name of the corporation.

MR. KIMELMAN: Your Honor, if I may. That's the name that the agents knew the premises by. And all their case reports reflect the 293 Clothing Corporation, 293 Grand Street. It's only used in connection with the clothing store.

MR. MAHLER: For the record, this is my testimony --

THE COURT: We will complete with this witness.

CROSS EXAMINATION (CONTINUED)

BY MR. MAHLER:

Q Officer, did you ever do -- these investigations on the name of the corporation?

A No, sir.

Q You don't know whether it's the 293 Clothing

Corporation, do you?

A Corporate records, no.

Q Now, on the prior occasion that you had gone to this premises, you noticed that there was a door other than the door to the store, did you not?

A That's correct.

Q Now, did you ever ascertain whether there was any other address for that door, aside from 293 Grand Street? In other words, is there any other address on that building, aside from 293 Grand Street, if you know?

A To my knowledge, I will say no.

Q You say no, to your knowledge?

A Right.

Q Now, the basement at this store, officer, how do you get into the basement?

A There is a trapdoor in the back room of the clothing store.

Q And you go down into the basement, correct?

A That's one entrance.

Q Where is the other entrance?

A The other entrance is on the street proper. It's one of those grating type affairs that you open in the grating, and you walk down several steps.

Q So there is another entrance to the basement; is

that correct?

A That's correct.

Q Other than the entrance to the store?

A That's correct.

Q And you -- let me see if I can understand this. You can enter this basement from outside of the store; is that right?

A My experience I would not, no.

THE COURT: Was there an iron grating there?

THE WITNESS: There is an iron grating.

THE COURT: A door over the portion of sidewalk in front of the store?

THE WITNESS: Yes. Whether it's sealed, whether you can gain access, I don't know.

THE COURT: Then you don't know whether it's being used?

THE WITNESS: No, your Honor.

THE COURT: You have never seen any deliveries made through the basement through that --

THE WITNESS: No, never. All the deliveries I have seen have been through the store proper.

Q Do I take it properly from your testimony that you have already given, you never bothered to check -- on the day you executed the warrant to check the floors above the store?

A I never did.

Q Do you know if any of the other officers did?

A Whether Agent Campbell and his team did, I do not know.

Q I show you the warrant again. Would you look at it, please?

THE COURT: Incidentally, did one of you have the warrant in hand at the time of execution?

THE WITNESS: I believe Agent Campbell did.

THE COURT: Did you see it in his hand?

THE WITNESS: No, your Honor.

THE COURT: Can you tell me what the-custom and practice is in executing warrants? Is there a custom and practice as to whether the executing agent takes along the affidavit, or does he usually take just the warrant?

THE WITNESS: There's really no set policy.

THE COURT: It certainly isn't stapled on to the affidavit, is it?

THE WITNESS: In no circumstances, no. Because it contains certain information that you wouldn't want the defendant to know about.

THE COURT: More than that, there is a return on the back, and it's inconvenient to turn it over --

the affidavit, I suppose.

THE WITNESS: That's correct.

Q In fact, today is the first time you have really seen this?

A I haven't seen it yet.

Q You haven't even seen it yet.

Would you read the description of the articles that you are seeking with that warrant?

A Substantial quantity of marijuana, a schedule one controlled substance, and cocaine, schedule two controlled narcotic substance.

Q Do you know from your own investigation -- is there any investigation of marijuana coming out of that store?

A In my investigation, yes.

Q And --

MR. KIMELMAN: Your Honor, if I may.

THE COURT: I agree. It has nothing to do with this. I found that the warrant is sufficient. And all we are talking about is whether the warrant is proper in form, or whether it was so general that it violated the Fourth Amendment.

MR. MAHLER: Judge, may I presume for this hearing, that you already found the affidavit to be proper?

THE COURT: I already said that. The lawyers in this case don't believe me.

MR. MAHLER: I wouldn't --

THE COURT: No matter how many times I have said it. I said it specifically, and I will say it again. The affidavit is sufficient to support a warrant to search the premises.

The only question here is whether the warrant is sufficient. Or to put it differently, whether it was so general as to violate the Fourth Amendment.

Q How many people actually executed the warrant? Were there three or four officers?

A I'd say more.

Q More than three or four.

Did you all go into the store into the basement?

A That's correct.

Q And it's your testimony that you don't know if anybody went perhaps upstairs?

A To my knowledge, nobody went upstairs. No one was instructed to go upstairs.

MR. MAHLER: I have no further questions.

THE COURT: All right.

MR. KIMELMAN: Your Honor, if I may, at any time the Court desires, we can --

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(The following occurred in the absence of the jury.)

(Mr. Kimelman, Mr. Mahler and Mr. Sutton present. Mr. Matarazzo not present.)

THE COURT: Call your witness, Mr. Kimelman.

MR. KIMELMAN: The Government calls Edward Magno.

E D W A R D M A G N O , called as a witness on behalf of the Government, having been first duly sworn by the Court, was examined and testified as follows:

THE COURT: Go ahead, Mr. Kimelman.

MR. KIMELMAN: Yes, sir.

DIRECT EXAMINATION

BY MR. KIMELMAN:

Q Mr. Magno, by whom are you employed?

THE COURT: I beg your pardon?

MR. KIMELMAN: I asked him by whom he was employed.

A The Drug Enforcement Administration.

Q How long have you been so employed?

A Approximately three years.

Q In what capacity, sir?

A As a Special Agent.

Q Were you so employed in March of this year?

A Yes, sir.

Q And did you have occasion to help prepare an affidavit for a search warrant?

A Yes, sir, I did.

Q Was that affidavit for a search warrant for the premises at 293 Grant Street, Brooklyn, New York?

A Yes, it was.

Q Will you please tell me the circumstances leading up to your preparing of that affidavit.

A Yes, sir. Myself, Special Agent Cambell had a debriefing of a reliable source in Newark.

Q Is that a confidential informant?

MR. MAHLER: I object to the term "reliable," and move to strike.

THE COURT: Denied.

What do you mean you prepared the affidavit?

MR. KIMELMAN: I believe the question I asked him was did he help prepare it.

THE COURT: What did you do?

THE WITNESS: Well, I was with Special Agent Cambell during the debriefing of the source, and I was with Agent Cambell when he was preparing the affidavit with the U.S. Attorney.

THE COURT: Did you read the affidavit?

THE WITNESS: Yes, your Honor.

THE COURT: Did you see it when it was signed?

THE WITNESS: I wasn't there at the signing, no.

THE COURT: When Mr. Cambell signed the affidavit did you see it?

THE WITNESS: I was not there at the signing, your Honor.

THE COURT: But you saw the affidavit physically?

THE WITNESS: Yes.

THE COURT: When did you see it? Before the signing?

THE WITNESS: During the preparation and after it was signed.

THE COURT: You saw Mr. Campbell's signature on the affidavit?

THE WITNESS: Yes, sir.

THE COURT: I show you an affidavit dated March 26, 1974. Is that the affidavit you say you saw?

THE WITNESS: I saw a copy of that, yes.

MR. KIMELMAN: If I may, your Honor.

BY MR. KIMELMAN:

Q Did you see a signed copy of that affidavit?

A I saw a copy of an affidavit. I believe it

was signed.

THE COURT: All right, go ahead.

Q After you talked to this confidential informant did you personally go to the premises at 293 Grand Street?

A Yes, sir.

Q Do you recall the date that you went there?

A I don't recall the date.

Q Do you recall how much in advance of the execution of the warrant that you went to the premises?

A We had been at the premises prior to the preparation of the affidavit, after the debriefing of the source of information.

Q Do you recall how much in advance of the preparation of the affidavit you visited these premises?

A No, sir, I don't.

Q Would it be less than a month?

A Yes, matter of days.

Q A matter of days?

A Yes.

Q How many times did you visit the premises?

A Once prior to the affidavit -- after the signing of the affidavit -- the day prior to the execution of the warrant we went to the premises.

Q Will you describe the circumstances of your going there.

A Myself and the other surveillance agents went by the store, and the clothing store was closed at that time.

Q Was Special Agent Cambell with you?

A Yes, sir, he was.

Q Were there any other agents with you?

A Yes.

Q Were any of those agents participants in the execution of the warrant?

A Yes.

Q And do you recall their names?

A I can't recall everyone.

THE COURT: How are the premises described in the affidavit, not as you remember it, but in the affidavit?

THE WITNESS: It was a clothing store at 293 Grand Street, and the door of the clothing store had a glass door with a glass window on the left and right of the door.

THE COURT: Did it say which window was larger or did it say that they were both of equal size? Do you remember?

THE WITNESS: I don't recall.

THE COURT: Did it describe the windows, the relative size of the window?

THE WITNESS: I don't recall.

THE COURT: Did it describe the display of the merchandise in the window?

THE WITNESS: I don't recall.

THE COURT: What else did it say in the affidavit?

THE WITNESS: The affidavit contained the prior investigation conducted by myself and Agent Cambell.

THE COURT: No. I am interested in knowing the portion of the affidavit that described the premises. Nothing else. What else did it say about the premises?

THE WITNESS: As far as I recall it was a clothing store and had the glass windows.

THE COURT: All right, go ahead.

Q Did it have any description of the inside premises, if you recall?

A No, I don't recall.

Q Did you have any information from the confidential informant as to the inside of the store?

A Yes.

Q Can you tell us what that was?

MR. MAHLER: I would object to that.

THE COURT: I will allow it.

A He had stated that he had been in the store and that after you went through the main door of the store you went toward the back, and in the back of the store there was a desk, and by that desk there was a trapdoor. The trapdoor opened up and there was a basement beneath it.

Q Did he describe the basement to you at all?

A He said it was dimly lit in an old basement.

Q And did he give you any information as to where you might find the cocaine and marijuana stated in the warrant?

A He said that it was in the basement of the store.

Q Now, in your discussions with the informant had any mention ever been made of the apartments above the clothing store?

A No, sir, not to my recollection.

Q In your personal surveillances of the premises with Agent Cambell had you taken any notice of these apartments above the clothing store?

A No, sir.

Q I show you what has been marked as Government's Exhibit 7 and ask you if that is a fair representation of the premises as they were in March of this year.

A Yes, sir.

Q Do you see the doorway to the side of the clothing store?

A Yes, sir.

Q Do you recall that doorway being there?

A Yes, sir.

Q And did you take notice of that doorway as part of your surveillances?

A Well, no, we weren't really interested in the doorway. The informant was pretty explicit as to the clothing store.

Q Had you had any information that there was any criminal activity involving cocaine or marijuana in the apartments above the clothing store?

A No, sir.

Q I show you what has been marked as Government's Exhibit 8 and I will ask you if you recognize that.

A Yes, sir, I do.

Q Will you tell us what it is.

A It is a search warrant for the premises at 293 Grant Street.

Q Had you seen that search warrant before?

A Yes.

Q Did you in fact see the search warrant the day

the warrant was executed.

Q Did you see the caption on top of that search warrant?

A Yes.

Q Does that caption describe the premises to be searched?

A Yes, sir, it does.

Q And that caption reads 293 Clothing Corporation, 293 Grant Street, Brooklyn, New York?

A Yes, sir.

Q What did you take that to mean on the day that you executed the warrant?

MR. MAHLER: I object to that.

THE COURT: What's the question?

(Record read.)

THE COURT: I will allow it.

A I took that to mean the clothing store at 293 Grant Street.

Q Anything else?

A No, sir.

Q On the day that you executed the warrant do you recall how many agents were with you?

A I can't recall the exact number. Approximately four or five, I would imagine.

Q Did you have a briefing among all the agents to execute the warrant before you executed the warrant?

A Yes, sir, we did.

Q Will you briefly describe that meeting to us.

A Well, the day previous to the execution of the warrant most of the agents that were on the execution of the warrant had been down to the 293 clothing store approximately six o'clock that night or so. Then the next morning we met here in Brooklyn and we had a meeting and we discussed the execution of the warrant. And then we proceeded to the premises.

Q What was briefly the substance of that discussion about executing the warrant?

A Well, we --

MR. MAHLER: I would object to this as being self-serving.

THE COURT: May I have that question.

(Record read.)

THE COURT: I will allow it.

A Well, we spoke about how physically we were going to do it, and about the premises.

Q Was any description of the premises to be searched given?

A We discussed the premises and I believe a number

of the agents had known about the premises prior when we discussed the description of it.

Q Now, was Special Agent Dovetko present?

A Yes, he was.

Q Was Special Agent Cambell present?

A Yes, he was.

Q Was there any mention made of any premises outside of the clothing store and the basement?

A No, sir.

Q On the day you actually executed the warrant to your knowledge did any agent go anyplace else other than inside the clothing store?

A No, sir.

Q Do you know whether any attempt was made to search the apartment or to gain access or search the apartments that were above the clothing store?

A No, sir.

MR. KIMELMAN: I have no further questions.

(Continued on next page.)

(The following continued to be heard in the absence of the jury.)

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CROSS-EXAMINATION

BY MR. MAHLER:

Q Will you please tell the Court what was your connection with the case? Were you assigned to this case?

A I was Special Agent Campbell's partner at that time.

Q Was he assigned to this particular case?

A Well, not this particular case. We had a co-operating individual that had information about the 293 clothing store.

Q Was Campbell assigned to New York at that time?

A No, sir.

Q He was from New Jersey?

A Yes.

Q Were you from New Jersey?

A Yes.

Q Approximately what date did you become involved with the 293 clothing store?

A I don't recall the exact date. At the time of the debriefing of the informant.

Q And did you check out the 293 clothing store?

A Yes, sir.

Q And what did you check in connection with it?

A How do you mean check?

Q Did you check out the background of the store, who might own the store or --

A Yes, we did.

Q Who did that?

A I believe Agent Campbell.

Q Did he tell you what his results were?

A Yes, sir.

Q Did you find out what the name of the corporation was?

A Yes, sir, we discussed it.

Q What was the name of the corporation?

A It was the 293 Clothing Corporation.

Q Did that seem logical to you because it was at 293 Grant Street?

A Yes, it did.

Q Did you ever find out that wasn't the name of the corporation?

A Not that I recall.

Q How did you go about making the check? Can I ask you that?

A I believe there were -- we had the description from a reliable source that it was a clothing store, and the address. We checked the address through our files. I believe

he furnished telephone numbers.

THE COURT: How did you know that the proper corporate title of the entity that was doing business there was 293 Clothing Corp.?

THE WITNESS: I don't recall. It might have been through the telephones. I am not sure.

BY MR. MAHLER:

Q Did you ever check through the Secretary of State of New York?

A Not that I recall, no.

Q Well, would you know anybody that did?

A Special Agent Campbell might have.

Q But you yourself, you have no basis for your knowledge that you are telling us?

A Other than what I discussed with Agent Campbell.

Q Did you tell us that you read this affidavit?

A I was there during the preparation.

Q What does that exactly mean? Does that mean that you read the affidavit or didn't you read the affidavit?

A To the best of my recollection --

Q No, I didn't ask for the best of your recollection. Did you read the affidavit or didn't you read the affidavit? Can you answer the question?

A Yes, I read the affidavit.

Q Now, what did you do specifically in preparing this affidavit?

A Nothing.

Q Nothing?

A I was with Agent Campbell during -- when we got the information from our source. I was with him during the time he was doing the investigation.

Q Where did that happen? In what office?

A The Newark District Office.

Q What date were you with him?

A I don't recall the exact date.

Q Would you recall any date?

A The exact date?

Q You wouldn't recall the date, would you?

A No.

Q By the way, have you seen thousands of street level clothing stores in your lifetime, would you say, that you have passed or seen?

A I don't know about thousands. I have seen a number.

Q Have you ever seen any without glass windows?

A I never really took notice.

Q Can you really give us any kind of description of what kind of clothes it had?

A I didn't really take notice.

Q What did you take notice of concerning the store? You tell us.

A Well, I took notice of the premises --

Q Well, what did you take notice of? Tell us. What did you notice?

A I noticed the front of the store.

Q What did you notice about it?

MR. MAHLER: May I just remove the exhibit (indicating)?

THE COURT: Certainly.

Q What did you notice about it? Tell us what you noticed.

A The glass windows, the clothing, you know, there was clothing hanging in the windows.

(continued on next page)

CROSS-EXAMINATION

BY MR. MAHLER: (Cont.)

Q What particularly about the store, other than it was a clothing store, did you observe -- anything else, aside from the fact it had glass windows, anything particular?

A It had the address on it.

Q The address on the store.

Where was the address on the store?

A It was displayed on the awning, I believe.

Q Where else was it displayed?

A I can't --

Q Are you sure they had an awning at that time -- search your memory, are you sure?

A Yes.

Q This is back when, in March?

A Yes.

Q What else did you notice?

A The iron bars in front of the store.

Q Iron bars?

A It is a mechanism when they close the store at night.

Q Is that when you looked at night?

A The day before the execution of the warrant, we were at the store prior -- after the closing of the store.

Q Was this in the evening?

A In the evening.

Q What time?

A I don't know, around 6 o'clock -- 6, 6:30.

Q This was in the month of March?

A Yes, I believe so.

Q Was it dark out at that time?

A No, it wasn't dark.

Q Would you agree with me there is no sun on that side of the street at 6:30?

A I can't recall.

Q Take a look at this picture, if you will, exhibit B?

A Yes.

Q See any sun in that picture?

A I see sun.

Q The sun is not on the store, it is above the store, would you agree with me?

A Yes, sir.

Q Would you agree from looking at that picture that that picture was taken earlier in the day then when you were there?

A No, sir.

Q Wasn't it taken earlier in the day?

A I have no way of telling.

Q Well, from your own personal life experience, from living through the months of March during your life, will you agree that this doesn't depict 6:30 in the afternoon -- of a March afternoon?

A No, sir.

MR. KIMELMAN: Your Honor, if Mr. Mahler wants to tell us when the pictures were taken --

THE COURT: I am hearing this without a jury, but I would like to complete it.

Q What else can you tell us about the store -- nothing -- can you tell us something about the building itself -- are you telling us here that you never looked at this building?

A I looked at, you know, what I was interested in -- what I was interested in was what the informant related to us and that was the clothing store itself. The points that I was looking for in the clothing store were those points that the informant had related to us.

Q What points were you looking for?

Can you tell me anything except about the window?

A The informant stated to us that it was a glass door with glass windows on either side that you could see the clothing --

Q You say glass windows on either side.

Did you ever see a store that did not have glass windows on both sides that had a glass front?

A I don't know. I never really took notice.

Q What would you think would be on the other side if not glass -- it is a store front, isn't it?

A Yes.

Q What else do you know about the store?

A In what respect, physically?

Q Are you telling us that you wanted to search the basement of the store, is that what you wanted to do -- is that what you were interested in?

A Yes.

Q Did you put that in your warrant or in your affidavit?

A I don't recall.

Q You don't recall if anywhere you said that you wanted to search the store basement of the building?

A Yes, I recall the basement was the object.

Q You weren't interested in the rest of the building, is that your testimony?

A Yes.

Q You don't know whether the basement of -- whether that building had a basement of its own, did you?

A I'm sorry, would you -

- Q You didn't know whether the building itself had its own basement, aside from the store basement, do you know?

A No, sir.

Q Do you know how many stories this building is?

A No, sir.

Q Do you know -- did you ever try that other exit -- the entrance?

A No, sir.

Q You do know there was a second entrance to the building, don't you?

A Yes, I know there was.

Q Did you ever know where that led to?

A No, sir.

Q Did you know whether there was another entrance to the cellar -- to the basement of the store?

A Yes.

Q Was there?

A Yes, sir.

Q There was another entrance to the cellar -- to the basement of the store?

A I believe so.

Q Aside from the trap door in the store; is that right?

A I believe so, yes.

Q Now, is there any doubt in your mind whatever that there were stories -- levels on top of the store where there were windows?

A No, sir.

Q You knew that, didn't you?

A Yes, sir.

Q You knew there were probably apartments above the store, did you not?

A Yes, sir.

Q You saw the windows, didn't you?

A You know -- I don't really -- I don't really recall making that observation. I know that there were other levels above the store, yes.

Q You never did any investigation -- you never checked out these levels?

A I personally didn't, no.

MR. MAHLER: May I have just one second?

THE COURT: Yes, one second.

(Pause.)

MR. MAHLER: I have no further questions.

THE COURT: Anything further?

MR. KIMELMAN: No, sir.

THE COURT: You may step down.

7 Anything further?

MR. KIMELMAN: No, sir.

THE COURT: Do you want to offer anything, Mr. Mahler?

MR. MAHLER: If you will accept it. I haven't had time to have it certified.

THE COURT: Mark it.

THE CLERK: Document marked Defendant Diaz-Martinez exhibit C for identification in the hearing.

(So marked.)

MR. MAHLER: It seems to be a validated New York State Department of Taxation certificate. It has the Taxation stamp on it.

(Document shown to Court.)

THE COURT: I see from the affidavit that A. Diaz lived at 293 South 4th Street and the corporation could have gotten its name from that address.

MR. KIMELMAN: I would object, if that is going to be offered into evidence.

THE COURT: This to me is obviously a stamp of the Department of Taxation and Finance made in the regular course of business of the State of New York.

MR. KIMELMAN: Your Honor, I don't believe that that is a self-authenticating document, unless the Court has judicial notice as to how these stamps are

put on.

THE COURT: We will say it differently:

There is no proof offered by the Government that 293 Clothing Corporation, operated a clothing store at 293 Grant Street.

MR. KIMELMAN: That is correct, your Honor.

THE COURT: I find that the warrant directed that the premises be searched is 293 Grant Street, Brooklyn, New York. 293 Clothing Corporation is of no significance. It does not identify the premises. It only indicates a corporation. There is no showing that the corporation operated the clothing store.

MR. KIMELMAN: Your Honor, if I may --

THE COURT: Let me complete.

MR.KIMELMAN: Yes, sir.

THE COURT: I find that the officers executing the warrant knew that the premises involved were the clothing store and the basement of the clothing store.

In order to determine the validity of the warrant we start with the Fourth Amendment, which requires that a warrant particularly describe the place to be searched.

The information concerning the description of the place to be searched is not based on the personal knowledge of the executing officers. It does permit interpretation as to what the warrant means by the

executing officer and the particularity can be ascertained through a determination of whether the officer can reasonably ascertain and identify the place to be searched.

There are cases where warrants did not accurately describe the place to be searched, as where a single occupant of a building was the subject of the search and the warrant, erroneously described the address.

Moore against the United States 261 F. 2d 1236 District of Columbia case, 1972.

United States against Hinton 219 F. 2d 324, Second Circuit, 1955.

Said thatthe affidavit must show probable cause to search each apartment in a multi-family building.

In this case we have a clothing store and other apartments above, two-stories above the clothing store. The clothing store is separate and apart from the upper apartments, so there were one or more other units in that building. There is no proof as to how many. The Government has the burden of proving the validity of the warrant by proof beyond a reasonable doubt. The premises are improperly described. There is nothing in the affidavit to support a search of the upper floors. This warrant can only be sustained under Kenney against the United States 157 F. 2d 442 and United States

against Snow 9 F. 2d, 978 at page 979.

First, if the warrant makes reference to the affidavit that contains the precise description and secondly if the affidavit accompanies the warrant upon which execution is made.

The Government failed to show that the affidavit accompanied the warrant.

The next question is whether proof that the executing officer knew the precise premises to be searched and the Government cite United States against Ramos, decision by Judge Bonsel, Judge Mansfield in a pretrial order found that the warrant sufficiently identified the premises when it described the premises as the apartment in the basement or the premises known as 130 West 74th Street basement apartment, New York, New York.

Judge Bonsel in his opinion said moreover it would have been impossible to discover that there was more than one basement apartment until after the rooms in the basement had been searched.

There is no indication as to whether the affidavit accompanied the warrant. I think that describing the premises to be searched as the basement in a building or basement apartment, when there was no way of finding whether there was more than one apartment,

is significantly different than a three-story building where it is obvious that there was more than one premises to be searched or premises occupied by more than one occupant.

I am ready to grant the motion to suppress on the grounds stated.

MR. KIMELMAN: Would you hear further argument?

THE COURT: Surely, briefly.

MR. KIMELMAN: In Special Agent Cambell's affidavit, it is part of the record, he states -- there has been no allegation that Special Agent Cambell has either lied or made a material --

THE COURT: I do not care what it states.

I do not know whether I would have denied the motion if Agent Cambell came here and said that he was at the premises and when he executed the warrant he knew what was in the affidavit.

I do not think I have to reach that point. The point is that he is not here and he did not say it.

The mere fact that it is in an affidavit, does not mean that he realized that when he executed the warrant he knew what was in the affidavit.

(Continued next page.)

nb 1 1 MR. KIMELMAN: If I may, he says that he checked with the New York City Telephone Company and he learned from the New York Telephone Company that the telephone number listed at those premises were listed to a 293 Clothing Corp. That is how the name got on the warrant and Federal Agent Dovetko also made telephone checks with the Telephone Company and he informed Special Agent Cambell that --

THE COURT: Let us start from the beginning: The premises must be specifically described in the warrant.

MR. KIMELMAN: Yes, sir.

THE COURT: That is what you start with.

MR. KIMELMAN: I understand, but your Honor said that the Government had offered no proof that these premises were in fact the 293 Clothing Corp.

I believe that is part of the Court's decision.

THE COURT: That is right.

MR. KIMELMAN: I say to the Court that there was proof in the fact that these agents knew of their own knowledge, by making checks with the New York City Telephone Company, that there was a phone subscribed to the 293 Clothing Corp.

THE COURT: I also said it is quite immaterial because it does not describe the premises to be

searched. It names a corporation. 293 Clothing Corporation could be anyplace in New York State or the country. The mere fact that it had the address of the corporation is quite immaterial. The premises to be searched was 293 Grant Street.

MR. KIMELMAN: There is an awning on the picture in evidence that says 293 Clothing Center.

If the warrant was for the 293 Clothing Center, without anything further, would the Court say that the difference between 293 Clothing Corp. and 293 Clothing Center is such a difference as to the description of the premises or is this the technical description?

THE COURT: The building is 293 Grant Street and not the clothing store.

The warrant was to search the entire building.

Do you have any question in your mind that based on that warrant the agents could have searched the entire building?

MR. KIMELMAN: Yes, I do.

THE COURT: You do have a question in your mind?

MR. KIMELMAN: Yes, sir.

THE COURT: It would be an illegal search.

Looking at that warrant alone you say there is a question in your mind as to whether they could search the upper floors?

3 MR. KIMELMAN: With the decision cited by the Government, we can't just look at the warrant, we have to look at the knowledge of the agents.

THE COURT: It is a reasonable interpretation of the agent looking at the warrant.

MR. KIMELMAN: The case is cited by the Government, if the Agents made surveillance and if there was no question in their mind as to the premises to be searched --

THE COURT: The only case that you have is Ramos?

MR. KIMELMAN: And Gomez and Pisano.

THE COURT: The motion to suppress is granted.

MR. KIMELMAN: Yes.

Before we seat the jury, could we bring out Mr. Fiffe?

MR. De PETRIS: There has been a delay in Miss Mensa and Miss Clancy arriving. We have another interpreter here until the two women arrive.

THE COURT: Very well.

MR. SUTTON: May I renew my request that Mr. Abbott be excluded? There is a possibility that he is going to be called as --

THE COURT: I will allow him to be called. It is on the record. Nothing wrong with it.

4 Seat the jury.

(The jury entered the courtroom.)

THE COURT: Good morning, ladies and gentlemen. I know you were all here on time. I just couldn't reach you. It is reasonably close.

Call your next witness.

MR. KIMELMAN: The Government calls Manuel Fiffe.

(Interpreter sworn.)

THE CLERK: State your full name, please.

THE INTERPRETER: Margarita Mensa.

M A N U E L F I F F E , having been first duly sworn by the Clerk of the Court through the Interpreter, testified through the Interpreter as follows:

THE CLERK: State your full name.

THE WITNESS: Manuel Fiffe, F-i-f-f-e.

MR. KIMELMAN: Shall I proceed?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. KIMELMAN:

Q Mr. Fiffe, do you speak English at all?

A No, nothing.

Q Mr. Fiffe, would you please speak nice and loud so that I can hear you back here.

Mr. Fiffe, how old are you?

A 45 years old.

Q What education have you had?

A Up to the eighth grade in my country.

Q Where were you born?

A In Cuba.

Q Is that where you were born?

A Yes, sir.

Q When did you leave Cuba?

A In 1970.

Q Are you still a citizen of Cuba?

A I left Cuba on February 11, 1970.

Q Are you still a citizen of Cuba?

A Yes.

Q Did you come to the United States in 1970 from Cuba?

A Yes.

Q Have you ever been in the United States before?

A In 1956.

THE COURT: Will you ask the witness to please speak louder so that the interpreters at counsel table can hear what he says.

Q And were you asked to leave the United States in 1956?

A Yes, sir.

Q Did you leave voluntarily?

A Yes, voluntarily.

THE COURT: We still cannot hear him.

THE WITNESS: I came here, I stayed 29 days and I overstayed my permit and then I went back to my country.

Q When you entered the United States in 1970, did you enter legally or illegally?

A Legally for 29 days.

Q Are you here legally now?

A Yes, legally as a Cuban refugee.

Q Mr. Fiffe, have you ever been arrested before?

A No, never.

Q You were arrested in connection with this case; is that correct?

A That's correct.

Q Were you arrested this year by the State on a cocaine charge?

A Yes, sir.

Q And were you arrested for a traffic violation in 1971?

A Yes.

MR. MAHLER: I would object, your Honor.

THE COURT: May I have the question and answer?

(Testimony read.)

THE COURT: Strike that out. The jury disregard it.

Q Mr. Fiffe, have you ever been convicted of any crimes outside the crimes charged in this case?

A Never.

Q Mr. Fiffe, did you plead guilty arising out of charges in this case?

A Yes, sir.

Q And do you know what you pleaded guilty to?

A Of being an accomplice.

Q Do you know what the penalties are that you are now subject to?

A From zero to 15.

Q Mr. Fiffe, did you make an agreement with the United States Government to testify here today?

A Yes, sir.

Q Did you make an agreement -- was that agreement in the presenceof your lawyer with his knowledge?

A Yes.

Q Can you tell us in your own words what you understood that agrement to be?

A The agreement is that I have six charges pending against me in this court and they will be grouped in one charge only as being an accomplice.

Q In other words, you understand that the remaining five charges against you will be dismissed?

A Yes, sir.

Q You also testified that you were arrested by the State on a narcotics charge; is that right?

A That's correct.

Q Do you know if there is an indictment for the sale and possession of cocaine now pending against you in the State Court?

A There are two charges.

Q You mean two counts of one indictment?

A Yes, two sales.

(Continued on next page.)

Q Has the Government -- has the United States Government made any agreement with you concerning the State charges?

A Well, assuming that I am sentenced here, then they will send a letter to the State Court explaining to them the truth of what I have testified here.

MR. SUTTON: May I respectfully ask that the witness again be urged to speak up louder.

THE COURT: We will try it.

Try to speak louder, Mr. Fiffe, so that Mr. Kimelman can hear your Spanish. If you get your voice to him, then maybe the others will hear it. We have interpreters interpreting your Spanish and they want to hear what you say.

Q Now, regarding what you just said, do you understand that the Government will make your cooperation known to the State authorities?

A That is so, yes.

Q Mr. Fiffe, has anybody promises you what sentence you will receive for pleading guilty in this court?

A No.

Q What has the United States Government told you about what they will do for you on the charges that you plead guilty to?

Q Has the Government -- has the United States Government made any agreement with you concerning the State charges?

A Well, assuming that I am sentenced here, then they will send a letter to the State Court explaining to them the truth of what I have testified here.

MR. SUTTON: May I respectfully ask that the witness again be urged to speak up louder.

THE COURT: We will try it.

Try to speak louder, Mr. Fiffe, so that Mr. Kimelman can hear your Spanish. If you get your voice to him, then maybe the others will hear it. We have interpreters interpreting your Spanish and they want to hear what you say.

Q Now, regarding what you just said, do you understand that the Government will make your cooperation known to the State authorities?

A That is so, yes.

Q Mr. Fiffe, has anybody promises you what sentence you will receive for pleading guilty in this court?

A No.

Q What has the United States Government told you about what they will do for you on the charges that you plead guilty to?

A That if I am found guilty, they will try me.

MR. KIMELMAN: Your Honor, if I may have permission to slightly lead?

THE COURT: Go ahead.

Q Mr. Fiffe, has the United States Government promised you that they will tell the Judge in this court of your cooperation in testifying?

A Yes, sir.

Q And has any other promise been made to you?

A No.

Q Mr. Fiffe, were you were arrested on these charges, where were you employed?

A At 293 Grant Street, the owner of the place was Israel Diaz-Martinez and Jose Vega --

MR. SUTTON: I move to strike the answer as not responsive.

THE COURT: Motion denied.

MR. MAHLER: I move to strike the answer. I move to strike the question as being no foundation laid. I object to the question.

THE COURT: Overruled.

Mr. Fiffe, I want you to answer the question asked. Do not volunteer any additional information.

Q Mr. Fiffe, you said you were employed by a

gentleman known as Israel Diaz-Martinez. Do you see him in the courtroom today?

A Yes.

Q Would you describe him for us, what he is wearing today.

A He is wearing a blue suit, gray shirt and black shoes. I am seeing him from here.

THE COURT: Please rise, Mr. Diaz.

(Defendant Diaz stands.)

THE COURT: Is that the gentleman?

THE WITNESS: Yes.

THE COURT: Let the record show that the witness pointed out the defendant Israel Diaz-Martinez.

Q That's the gentleman that employed you at the clothing store at 293 Grant Street?

A That's correct.

Q When did you start working for Mr. Diaz?

A I began working for him in Manhattan on Broadway, but then that store moved to 293 Grant Street. There were some alterations made to the store and then I continued to work there.

Q Do you know if Mr. Diaz had any other stores other than at 293 Grant Street?

A No.

Q Did he have any stores on Manhattan Avenue?

A Well, yes, the Boro-White.

Q Do you know where that was on Manhattan Avenue?

A On Manhattan and Broadway.

Q Could you tell us the full name of that store?

A Boro-White.

Q O.K. When you worked for Mr. Diaz at 293 Grant Street, what were your duties?

A My duties were to sew the clothing and to tend the shop, but later on there were other duties.

Q What were those duties?

A Trafficking with drugs.

MR. MAHLER: I object to that.

MR. SUTTON: May we have a sidebar, your Honor?

THE COURT: No, you do not need a sidebar. Strike it out. Objection sustained.

Go to the conversation or whatever else underlies what you say underlies the conclusion.

MR. SUTTON: Is it possible --

THE COURT: I have stricken it and there is nothing here, Mr. Sutton -- nothing before me.

Q Mr. Fiffe, did there come a time when you sold cocaine in the clothing store?

THE INTERPRETER: I did not hear the last words.

MR. KIMELMAN: In the clothing store.

MR. SUTTON: I respectfully object.

THE COURT: On what ground?

MR. SUTTON: May we have a sidebar?

THE COURT: The jury may be excused.

(The jury leaves the courtroom.)

THE COURT: What is wrong with that question?

MR. SUTTON: It assumes that this man knows what cocaine is and he can identify it and all the rest of the problems arising from that.

THE COURT: Any other argument about that?

MR. SUTTON: No.

THE COURT: Do you have any question about it?

MR. MAHLER: No.

THE COURT: Objection overruled.

MR. MATARAZZO: Neither do I.

MR. MAHLER: Would it be possible to get two minutes to call another court, just to advise another court that I am on trial here?

MR. KIMELMAN: Your Honor, if I may? I have received a note from Judge Travia and they scheduled two matters that I have at 10 o'clock for 11:30. I would ask if we could have a brief recess at 11:30.

THE COURT: Could you wait until then?

MR. MAHLER: Yes, thank you.

MR. KIMELMAN: Ask him how he feels?

THE WITNESS: Fine.

MR. KIMELMAN: O.K.

(Jury present.)

MR. KIMELMAN: May we have the last question and answer.

THE COURT: Yes.

(Testimony read.)

THE WITNESS: Yes.

Q When did you first start selling cocaine in the clothing store?

A Well, around November 5th.

Q November 5th of what year?

A 1973.

Q Had you ever sold cocaine in the clothing store before that date?

A Well, on certain occasions he would leave me packages for me to give them to certain clients.

Q Who would leave you packages?

A Israel Diaz-Martinez.

Q Did you know what was inside those packages?

A Cocaine.

Q How did you know that?

A Because he told me that.

Q Did you ever see inside the packages?

MR. MAHLER: May we have a date?

THE COURT: Will you try and fix the date?

MR. KIMELMAN: I will try.

Q Do you recall at approximately what dates Israel Diaz gave you packages of cocaine?

THE COURT: Strike it out.

The question is, can you recall the dates on which Israel Diaz-Martinez gave you packages, yes or no.

THE WITNESS: He gave me on the 5th, he also gave me on the 12th.

Q Of what month?

A November.

Q Did he ever give you packages in September?

A November 5th.

MR. MAHLER: I object.

THE COURT: Overruled. I will allow it.

Q Did he ever give you any packages of cocaine in September?

MR. SUTTON: Objection, there is no proper foundation for that. The question was packages.

THE COURT: May I have the question.

(Question read.)

THE COURT: Overruled, you may answer.

THE WITNESS: On several occasions.

Q Did he ever give you any packages of cocaine in October of 1973?

A Always.

THE COURT: Do you recall the first time you had any conversation with Mr. Diaz-Martinez about a package?

THE COURT: Strike it out as not responsive. Please read the question back.

(Question read.)

THE COURT: I am striking it out because it is obvious that he is not answeringthe question.

(Continued on next page.)

THE COURT: Yes or no?

THE WITNESS: Yes.

THE COURT: When was that?

THE WITNESS: November 5th.

THE COURT: What did he say to you and what did you say to him?

MR. KIMELMAN: Your Honor, I must request a side bar.

THE COURT: All right, I will withdraw the question. Go ahead, Mr. Kimelman.

MR. KIMELMAN: Thank you.

BY MR. KIMELMAN:

Q Mr. Fiffe, when is the first time you had a conversation with Mr. Diaz about the sale of cocaine?

A Around October.

Q And do you recall what the -- what you said and what he said, if anything?

A That he was going to take a little cocaine and that he was going to distribute it, and he asked me if I could help him.

MR. SUTTON: Excuse me, your Honor, I am not getting everything he says. The sound of his voice is not coming through here. I imagine they are having worse trouble than I am (indicating).

MR. KIMELMAN: I suggest that Mr. Sutton sit closer.

THE COURT: Yes, why don't you do that? You have been having trouble all through the trial. You may sit right next to the reporter if you wish.

MR. SUTTON: May we bring this forward (indicating)?

THE COURT: Yes, bring the table forward.

BY MR. KIMELMAN:

Q Did he give you any reason why he was going to sell cocaine?

MR. SUTTON: Objection.

THE COURT: Sustained as to form.

Did he say anything else at that time?

THE WITNESS: No.

Q And then did you in fact start to sell cocaine?

A Yes.

Q Were you selling cocaine for yourself?

A No.

Q Did you ever receive any profits from the sale of cocaine?

MR. SUTTON: Objection.

THE COURT: Overruled. I will allow it.

A Never.

Q And could you tell us exactly what you did in regard to selling the cocaine? What were your duties?

MR. SUTTON: Objection.

THE COURT: Sustained. It calls for a conclusion, what were your duties.

MR. KIMELMAN: That is the question.

THE COURT: I know. It is objected to and sustained.

What did you do with reference to the sale of cocaine?

MR. SUTTON: Objection as not responsive.

THE COURT: I don't know what it is yet. I don't speak spanish.

THE WITNESS: He would leave with me packages with ounces of cocaine and I was supposed to give them to the persons who would come.

THE COURT: Motion to strike denied. Go ahead.

BY MR. KIMELMAN:

Q Mr. Fiffe, do you know what cocaine is?

A Yes.

MR. SUTTON: Your Honor, I thought we had a question --

Q How do you know what cocaine is?

MR. SUTTON: Objection, your Honor.

THE COURT: Overruled. I will allow it.

A Because he showed it to me. I began sniffing cocaine myself.

Q Do you know on how many occasions you have taken cocaine yourself?

A Several occasions.

MR. MAHLER: Excuse me, your Honor, for the purpose of the question, can we establish when it started?

THE COURT: You can do it on cross-examination.

MR. MAHLER: I would object to it because there is no basis for it.

THE COURT: Objection overruled.

When he started taking cocaine has no relationship to any objection to the question. It has nothing to do with the conspiracy. He is just testifying as to whether or not he can identify cocaine.

Go ahead, Mr. Kimelman.

BY MR. KIMELMAN:

Q Now, did you ever sell cocaine for yourself?

A No.

MR. SUTTON: Objection, your Honor. It calls for a conclusion.

THE COURT: May I have the question?

(Record read.)

THE COURT: Overruled. I will allow it.

THE INTERPRETER: The answer was no.

BY MR. KIMELMAN:

Q Did you ever sell cocaine for anyone else other than Israel Diaz-Martinez?

A Yes. On two cases that I have pending here.

THE COURT: Strike that out as not responsive.

The question is, did you sell cocaine for anyone else other than Israel Diaz-Martinez? Yes or no?

THE WITNESS: No.

Q Now, Mr. Fiffe, do you know an individual called Victor Blanco?

A Yes.

Q Do you know if he has a nickname?

A El Colorao.

Q Is that a spanish name?

A Yes.

Q Do you know what that means?

A Colorao, or blond.

Q Now, could you tell us the circumstances under which you met Victor Blanco?

A I met Victor Blanco through Juanita Guzman. They knew each other. And she sent him to the shop to sell him

clothing at a reasonable cheap price.

Q Now, who is Juanita Guzman?

A Wife, friend, of Diaz-Martinez.

Q Do you know whether they were married?

A No.

Q Do you know if they live together?

A Well, he rented an apartment and he pays for her expenses. He lives in 239. The name of the street is Sud Fourth.

THE COURT: Is Sud South?

BY MR. KIMELMAN:

Q If I may ask, will you ask him if the name of the street is South Fourth Street?

THE COURT: I didn't ask you. I asked the witness.

A (continuing) South Fourth, 239.

Q Is that where Juanita Diaz stayed, or Juanita Guzman?

A Yes, she lives there.

Q Do you know if any cocaine was ever kept at 239 South Fourth Street in Juanita Guzman's apartment?

MR. SUTTON: Objection.

THE COURT: Sustained.

Were you ever at the apartment?

THE WITNESS: Several occasions.

THE COURT: All right, go ahead.

BY MR. KIMELMAN:

Q Will you tell us what the apartment looks like?

A There is a staircase that goes up to a white door. As you go in, the bathroom is on the left, the living room is on the right, the bedroom is in front. Then there is a kitchen.

Q Had you ever seen the cocaine in that apartment?

MR. SUTTON: Objection.

THE COURT: Overruled. I will allow it.

A Yes, he cut the cocaine there. He prepared it.

MR. SUTTON: Objection and move to strike.

THE COURT: Strike it out as not responsive.

Q When you saw the cocaine in that apartment,what were the circumstances?

MR. MAHLER: I object.

THE COURT: Overruled. I will allow it.

A To distribute it.

MR. MAHLER: I object.

THE COURT: Strike it out. It calls for a conclusion.

What did you see done with the cocaine at the apartment?

THE WITNESS: It was prepared to be sold.

MR. SUTTON: Objection.

THE COURT: Strike it out.

What did you see anyone do with the cocaine? Each step?

THE WITNESS: Well, he would take --

MR. SUTTON: Objection.

THE COURT: I can't rule until I hear the translation. You speak spanish, but I do not.

THE WITNESS: Well, he would take a one-eighth or two-eighth and he would cut it and would mix it up and make from that a bigger quantity of drugs. And then he would prepare it in packages of one ounce, two ounces, one-eighth, two-eighths and sell it.

MR. SUTTON: He said "for example." Did he use the word "for example"?

THE COURT: I do not want you to question the interpreter.

MR. SUTTON: I apologize.

THE COURT: If you don't agree with the interpretation, you can take the stand and you can testify as to what you understand the translation to be. I will not have disputes among the various interpreters or spanish-speaking lawyers about what the interpretation

means. If you challenge an interpretation, be prepared to take the stand.

Now, on what ground did you object?

MR. SUTTON: Well, I thought -- my understanding was that he was saying, for example, this is what would be done. And that is not a description of what he actually saw.

THE COURT: Motion to strike denied.

BY MR. KIMELMAN:

Q Mr. Fiffe said he would do certain things. Who are you referring to?

A Israel Diaz-Martinez.

Q Was there anyone else present at Juanita Guzman's apartment on these occasions?

A Diaz-Martinez, Juanita Guzman, Luis Felipe-Miranda and myself.

Q Now, Mr. Fiffe, I direct your attention to November 5th of 1973. Did Victor Blanco introduce you to a customer of his on that date?

A The man who is right there (indicating).

THE COURT: Will you please stand?

(Mr. Barry Paul Abbott rises.)

THE COURT: Is that the man you pointed out?

THE WITNESS: Yes, sir.

THE COURT: Let the record show that the witness pointed out Barry Paul Abbott.

BY MR. KIMELMAN:

Q And by what name did you know this man?

A Barry.

Q Could you tell us where you met Barry?

A I met him in Victor Blanco's house.

Q And was that on November 5, 1973?

A Yes.

Q Now, did you sell anything to Barry on that date?

A Yes.

Q Can you tell us what you sold him?

A One ounce of cocaine.

Q And where did you get that one ounce of cocaine from?

MR. MAHLER: I would object to it.

THE COURT: Strike it out as untranslated. The only question was, where did you get it?

Q Under what circumstances did you obtain the cocaine that you gave to the agent?

A I was in my house about four or five p.m. and Mr. Israel Martinez gave me one ounce of cocaine to be delivered to Victor Blanco. And when I arrived at Victor Blanco's house I met a customer there whom I had already known

because Victor had introduced me to him.

Q Was that customer Barry?

A Yes.

Q Now, before you brought the cocaine to the house, did you have a discussion with Mr. Diaz-Martinez about the price of the cocaine?

A Yes.

Q And could you tell us what was said about the price of this cocaine?

A When I arrived there he gave me the one ounce of cocaine and he said to me, charge him five hundred.

Then I went and I gave it to Victor Blanco.

And Victor Blanco gave it to Barry.

He looked at it and he liked it. And he paid Victor Blanco.

Q Now, do you know how much money he paid Victor Blanco for that one ounce of cocaine?

A Five hundred dollars.

Q And did you get that money?

A Yes.

Q Could it have been more than five hundred?

A It could be. I remember that it was five or six hundred dollars, but I think it was five hundred.

Q Now, did you make any future arrangements with

Barry to purchase more cocaine?

A No, because if he needed more --

THE COURT: All right, strike out everything after "because."

If the question calls for a yes or no answer, please try to just answer it yes or no. Try not to give any additional information if the question doesn't call for it.

THE WITNESS: Yes. He gave me five hundred dollars.

MR. SUTTON: There is no question.

THE COURT: There is no question pending.

Go ahead, Mr. Kimelman.

MR. KIMELMAN: Thank you.

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BY MR. KIMELMAN:

Q Did you receive the money from Victor Blanco for the sale of that ounce of cocaine?

A Five hundred dollars.

Q And after you left --

A -- or maybe more.

Q And after you left Victor Blanco's apartment with the money where did you go?

A I went to the shop --

MR. SUTTON: Objection.

THE COURT: May I have the question, please?

(Record read.)

THE COURT: Go ahead. You may continue.

A (continuing) I went to the shop at 293 Grant Street where the owner, Mr. Diaz-Martinez, was there, and in front of Felipe-Miranda I gave him the money because they were together there in the shop. And I gave him the money that had been paid to me by Victor Blanco.

THE COURT: Motion denied. I will let it stand.

Q Did you give him all the money that you received from Victor Blanco?

A All.

Q Did you get paid anything for it?

A Nothing.

Q Now, do you recall that you met with Barry on November 8, 1973?

(Mr. Sutton rises.)

THE COURT: No, strike it out.

Do you remember meeting on November 8th? Yes or no?

A Yes.

Q Can you tell us where you met on November 8th?

A Victor Blanco and Barry went to the shop --

(Mr. Sutton rises.)

THE COURT: Strike everything else out. Let the record show that Mr. Sutton was ready to rise again. And the additional spanish translation has not been translated. Go ahead.

BY MR. KIMELMAN:

Q Did you have a conversation with Victor Blanco and Barry on that date?

A Yes.

Q Was that conversation at the clothing store?

A Yes.

Q And did you --

THE COURT: Come in with the question. That will discourage any additional answer.

Q Can you recall what the conversation was about,

what you said and what was said to you?

A Prior to that Victor had already mentioned to me that the customer wanted one-eighth of cocaine. And that on the 8th he was going to that store. Then I had already spoken to Mr. Diaz-Martinez about this and he had given me a sample for me to give to Victor Blanco and Barry.

MR. SUTTON: Objection, your Honor. It is not responsive to the question.

THE COURT: May I have the question, Mr. Simon?

(Record read.)

THE COURT: Strike it out. The jury is to disregard it.

Try it again, Mr. Kimelman.

MR. KIMELMAN: Yes, sir.

BY MR. KIMELMAN:

Q Did you have a discussion in the clothing store on November 8th, 1973 with Barry about the sale of an eighth of a kilogram?

A Yes.

Q And did you have anything with you to give to Barry?

A One sample that had been given to me by Israel Martinez.

MR. SUTTON: Objection.

THE COURT: Strike out "that had been given to me by Israel Martinez."

What did Barry say to you and what did you say to Barry at that time in the store?

THE WITNESS: Victor Blanco had already told me that Barry wanted one-eighth of that same cocaine.

MR. SUTTON: Objection.

THE COURT: Denied. Continue.

THE WITNESS: (continuing) Then I told that to Isreal Diaz-Martinez. I told him that they were coming on the 8th.

(Mr. Sutton rises.)

THE COURT: Denied, Mr. Sutton. Mr. Sutton rose. Denied.

THE WITNESS: (continuing) He then gave me a sample for me to give it to Victor Blanco and Barry.

BY MR. KIMELMAN:

Q Is that the sample that you had with you on November 8th, 1973?

A Yes.

Q Was that a sample of cocaine?

A Cocaine, yes.

Q Will you describe how big was the sample?

A It was a piece of aluminum foil with a little

cocaine on it.

Q Did you in fact give the sample to Barry on November 8th, 1973?

A Yes.

Q Now, did you try any of that sample yourself?

A Yes, before that, yes.

(continued on next page)